1971

SUPREME COURT OF THE UNITED STATES.

No. 67.

WILLIAM FENN, PL'FF IN ER.,

vs.

PETER H. HOLME.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MISSOURI.

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Pleas held before the honorable Robert W. Wells, district judge of the United States for Missouri district, and one of the judges of the United States circuit court for Missouri district, on Monday, the twentieth day of October, in the year of our Lord one thousand eight hundred and fifty six.

Style.

PETER HOLME, plaintiff,
agst.
WILLIAM FENN, defendant. } In ejectment.

Preamble.

Be it remembered that heretofore, to wit, on the twenty-sixth day of February, eighteen hundred and fifty-five, came the plaintiff, by his attorney, and filed in the office of the clerk of the United States circuit court for Missouri district his declaration against the defendant, in the words and figures following, viz:

Declaration.

IN THE CIRCUIT COURT OF THE UNITED STATES
For the District of Missouri, April term, 1855.

PETER HOLME, plaintiff,
vs.
WILLIAM FENN, defendant.

Peter Holme, a citizen of and residing in the State of Illinois, and not a citizen of or residing in the State of Missouri, complains of William Fenn, a citizen of the State of Missouri, of a plea of trespass in ejectment, for that the plaintiff, on the first day of April, in the year one thousand eight hundred and fifty-one, was lawfully entitled to the possession of a certain tract of land in St. Louis county, to wit, in the district of Missouri aforesaid, being the same tract of land known as United States survey No. 2498, and located by virtue of New Madrid certificate No. 150, and containing six hundred and forty acres; and being so entitled to the possession thereof, the defendant afterwards, on the day and year aforesaid, entered into said premises, and unlawfully withholds from the plaintiff the possession thereof, to the damage of plaintiff of one thousand dollars. Wherefore he sues, &c.

GLOVER & RICHARDSON,
Attorneys for Plaintiff.

And on said declaration a summons issued from said office, as follows:

Summons.

MISSOURI DISTRICT, *set:*

The President of the United States to the marshal of the Missouri district, greeting:

You are hereby commanded to summon William Fenn, a citizen of the State of Missouri, that he be and appear before the honorable circuit court of the United States for the district of Missouri, on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the first Monday of April next, then and there to answer unto Peter Holme, a citizen of the State of Illinois, in a plea of trespass in ejectment, to the damage of said plaintiff one thousand dollars. Hereof fail not, and have you then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, the twenty-sixth day of February, A. D. eighteen hundred and fifty-five. Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

[SEAL.]

BEN. F. HICKMAN, *Clerk.*

And upon said summons a return is endorsed, in the words and figures following:

Return.

I certify that I executed the within writ, by reading the same, together with the copy of the declaration thereto annexed, to and within the hearing of defendant, William Fenn, on this 3d day of March, 1855, in the city of St. Louis, Mo.

THOS. S. BRYANT,
U. S. Marshal.
By B. F. H. WOODSON,
Deputy.

And afterward, to wit, at the April term of the United States circuit court for Missouri district for the year 1855, on the 3d April, 1855, was had the following proceeding:

Plea filed.

PETER HOLME, plaintiff,
agst.
WILLIAM FENN, defendant. } Ejectment.

This day comes the defendant, by his attorney, and files his plea of not guilty in this case.

And said plea "not guilty" is as follows:

Plea not guilty.

IN THE CIRCUIT COURT OF THE UNITED STATES
For the District of Missouri, April term, 1855.

PETER HOLME
agst.
WILLIAM FENN.

The said defendant, by his attorney, comes and defends the force and injury when, &c., and says that he is not guilty of unlawfully withholding the said premises from the plaintiff, as alleged against him, and of this he puts himself upon the country, &c.

HILL, GROVER & HILL,
Att'ys for Deft.

And afterward, at the October term of said court for the year 1855, on the 9th day of October, 1855, was had the following proceeding:

Motion and affi't for cont'ce.

PETER HOLME, plaintiff,
agst.
WILLIAM FENN, defendant,
} Ejectment.

This day come the parties, by their attorneys, and on motion of plaintiff's attorney, and upon affidavit filed by him, it is ordered that this cause be continued until the next term of this court at the costs of said plaintiff.

And said affidavit is as follows:

IN CIRCUIT COURT U. STATES, *Dist. Mo.*

PETER H. HOLME
agst.
WM. FENN.

Thomas C. Chester, on his oath, states he has been agent of the plaintiff in the preparation of this cause, so far as relates to the procurement of testimony. That under the direction of plaintiff's attorney he took the deposition of Wm. Nelson, and the same has been placed on the files of the court, proving facts material to the plaintiff's case, to wit: that one George Dameron, sen., deceased, left eight children as his heirs-at-law, viz, four sons, John, George, Moses, and Bryant, and four daughters, viz, Mary, Elizabeth, Sylva, and Annsable. The plaintiff derives his title to the land sued for through the said John, Mary, George, Elizabeth, Bryant, and Sylva; and when this suit was called by the court, the plaintiff's attorney answered he expected to be ready, relying on said

deposition of Wm. Nelson. Since this announcement by the plaintiff's attorney, the deposition of Jefferson K. Dameron has been taken on the part of the deft., by consent of parties, and placed on the files of this court. It tends to prove that said George Dameron, sen., left only two sons, John and George, and only two or at most three daughters. This deposition is a surprise to the plaintiff. Affiant believes the facts stated by Wm. Nelson, in relation to the names and number of the children of George Dameron, sen., deceased, to be true. He was not aware that they would be disputed by any one, till the taking of the deposition of said Dameron. He is informed and believes that evidence can be procured fully sustaining the said statements of Wm. Nelson, and would have procured the same had he known they would be disputed. He believes and is advised by plaintiff's counsel that plaintiff cannot safely go to trial under the above state of facts, as there is no other person by whom the same facts can be proved that Wm. Nelson has proved in attendance on the court, nor has there been any chance to procure such proof since the taking said deposition of Jefferson K. Dameron. He asks a continuance, not for the purpose of vexation or delay merely, but that justice may be done. He believes he can procure testimony fully establishing the statements of said Wm. Nelson by the next term of this court; and further this affiant saith not.

THOS. C. CHESTER.

Sworn to before me this 9th day of October, 1855.

BEN. F. HICKMAN,
Clerk U. S. C. Ct.

And afterward, to wit, at the October term of the United States circuit court for Missouri district for the year 1856, on Friday, 10th day of October, 1856, was had the following proceedings in this case:

Jury and Trial.

PETER H. HOLME, plaintiff,
agst.
WILLIAM FENN, defendant. } Ejectment.

This day come the parties, by their attorneys, and this case being called for trial, and both parties being ready, it is ordered that a jury come, and thereupon comes said jury, as follows: Sherwood A. Owens, J. W. Barnfield, Giles T. Clark, J. H. Kibby, Montgomery Bryant, E. F. Deitz, J. D. Crane, Matthew Faucett, David Bayles, Joseph M. Bryant, R. C. Henry, and Lewis Lamkin, who were elected, tried, and sworn well and truly to try the issue joined between the parties, and the evidence in part heard but

not being concluded at the hour of adjournment, further proceedings herein are continued until to-morrow morning.

And afterward, at the same term of said court, on Saturday, 11th October, 1856, was had the following proceeding:

Trial.

PETER H. HOLME, plaintiff, agst. WILLIAM FENN, defendant. } Ejectment.

This day come again the parties, by their attorneys, and the jury sworn herein being present, further progress was made in the trial of this case, but not being concluded at the hour of adjournment, further proceedings herein are continued until Monday morning.

And afterward, at the same term of said court, on Monday, 13th October, 1856, was had the following proceeding:

Trial cont'd.

PETER H. HOLME, plaintiff, agst. WILLIAM FENN, defendant. } Ejectment.

This day come the parties, by their attorneys, and the jury sworn herein being present, further proceedings herein are continued until to-morrow morning.

And afterward, at the same term of said court, on Tuesday, October 14th, 1856, was had the following proceeding:

Trial.

PETER H. HOLME, plaintiff, agst. WILLIAM FENN, defendant. } Ejectment.

This day come again the parties, by their attorneys, and further progress was made in the trial of this case, but not being concluded at the hour of adjournment, further proceedings are continued until to-morrow morning.

And afterward, to wit, at the same term of the said court, on Wednesday, 15th October, 1856, was had the following proceeding:

Trial cont'd.

PETER H. HOLME, plaintiff, agst. WILLIAM FENN, defendant. } Ejectment.

This day come the parties, by their attorneys, and also the jury sworn herein, and further proceedings in this case are continued until to-morrow morning.

And afterward, at the same term of said court, on Thursday, October 16, 1856, was had the following proceeding:

Trial.

PETER H. HOLME, plaintiff,
agst.
WILLIAM FENN, defendant. } Ejectment.

This day come the parties, by their attorneys, and the jury sworn herein being present, further progress was made in the trial of this case, but not being concluded at the hour of adjournment, further proceedings are continued until to-morrow morning.

And afterward, at the same term of said court, on Friday, October 17th, 1856, was had the following proceeding:

Trial.

PETER H. HOLME, plaintiff,
agst.
WILLIAM FENN, defendant. } Ejectment.

This day come the parties, by their attorneys, and also the jury sworn herein, and further progress was made in the trial of this case, but not being concluded at the hour of adjournment, further proceedings are continued until to-morrow morning.

And afterward, at the same term of said court, on Saturday, October 18th, 1856, was had the following proceeding:

Juror excused and trial.

PETER H. HOLME, plaintiff,
agst.
WILLIAM FENN, defendant. } Ejectment.

This day come again the parties, by their attorneys, and the jurors sworn herein being present, by consent of said attorneys, J. H. Kibby, one of the jurors sworn herein, is excused from further attention as such juror, in consequence of his indisposition; and by further consent it is agreed that the remaining eleven jurors shall try and dispose of this case, as fully as if said panel had continued full and complete, and then, further progress being made in the trial of this case, but not completed at the hour of adjournment, further proceedings are continued until Monday morning.

And afterward, at the same term of said court, on Monday, 20th October, 1856, was had the following proceeding:

Trial and verdict.

PETER HOLME, plaintiff,
agst.
WILLIAM FENN, defendant. } Ejectment.

This day come again the parties, by their attorneys, and the jury

sworn herein being present, and the testimony and arguments of counsel being closed, the jury retired to their room to consult of their verdict,, and afterward returned into court the following verdict, viz: "We, of the jury, find from the evidence in the cause that the defendant is guilty of the trespass and ejectment complained of by the plaintiff, as to the 1-21th part of 17-64ths of the following described tract of land, viz: all that part of survey No. 2498 in the name of James Y. O'Carrol which is bounded on the north by the claim of Hubert dit Berry Tabeau, east by the claim of Motard, being survey 3182, and the western line of the St. Louis commons, south by the south line of said survey No. 2498, and west by the eastern line of Pierre Chouteau; and the jury find that the plaintiff has sustained damages on account of said trespass and ejectment to the sum of two hundred dollars for the premises recovered, and that the monthly value of the said premises recovered are forty cents; and as to the residue of the said premises the defendant is not guilty. Lewis Lamkin, foreman." It is therefore now considered by the court that the said plaintiff, Peter Holme, recover against the said defendant, William Fenn, the portion or parcel of land as described by the jury in their verdict rendered herein by them; and it is further considered by the court that the said plaintiff recover against the defendant the damages and monthly damages by said jury assessed, and also his costs in this suit expended, and that execution issue therefor, and that the plaintiff have his writ of possession against said defendant for the portion or parcel of land so adjudged in his favor.

And afterward, at the same term of the said court, on Wednesday, the 22d October, 1856, was had the following proceeding:

Mo. for new trial filed.

PETER HOLME, plaintiff,
agst.
WILLIAM FENN, defendant. } Ejectment.

This day comes the defendant, by his attorney, and files herein his motion to set aside the verdict of the jury and the judgment rendered herein, and to grant him a new trial upon the grounds and for the reasons set forth in said motion.

And said motion and reasons are as follows:

Mo. for new trial.

U. S. CIRCUIT COURT.

PETER H. HOLME
vs.
WM. FENN and al.

The defendant moves the court to set aside the verdict of the

jury and the judgment thereon rendered, and grant a new trial, because, 1st. The verdict is against law. It is against the evidence. The damages given are excessive. It gives the plaintiff more land than he is entitled to by the proof or the instructions of the court.

The court erred in admitting evidence offered by the plaintiffs, and also in excluding evidence offered by defendants.

The court erred in giving instructions asked by plaintiff, and also in refusing to give the instructions asked by defendants.

GEYER, with GIBSON & SHIPLEY, *P. D.*

And afterward, at the same term of said court, on the 19th day of November, 1856, was had the following proceeding, viz:

Mo. for new trial overruled.

PETER H. HOLME, plaintiff,
agst.
WILLIAM FENN, defendant. } Ejectment.

This day come again the parties, by their attorneys, and the motion to set aside the verdict of the jury and grant a new trial of this case, filed herein by the defendant, having been submitted to the court, and by the same having been heard and examined, and the court being now fully advised of and concerning the same, doth now order that the said motion be and the same is hereby overruled.

And afterwards, to wit, at the same term of said court, on Saturday, 29th day of November, 1856, was had the following proceeding:

Bill of exceptions filed.

PETER HOLME, plaintiff,
agst.
WILLIAM FENN, defendant. } Ejectment.

This day come the defendant, by his attorney, and offers herein his bill of exceptions, which having been examined, approved, and signed by the judge of this court, is ordered to be filed and made part of the record in this case.

And said bill of exceptions is in the words and figures following:

Bill of exceptions.

U. S. CIRCUIT COURT, *Oct. term*, 1856.

PETER H. HOLME
vs.
WILLIAM FENN.

On the trial of this cause the plaintiff gave in evidence the following documents:

1st. Paper marked A, being proceedings before old board com's

confirmation of 350 arps. to J. Y. O'Carrol; extension thereof to 640 acres by recorder of land titles, and translation thereof; certificate and tabular statement of injury of same by earthquakes; New Madrid certificate No. 150, &c., as follows:

Exhibit A "A" of plaintiff's.

Homo des personnes qui ont en permission de s'etablir sur les terres vacantes par l'ordre de Mr. Francois Lesieur, capitaine de milice de sa Majesté Catholique, du canton de la Petite Prairie, district de la Nouvelle Madrid.

No. 15, James Youns O'Carrolles a cee permission de s'etablir sur les terres vacantes le six Septembre, 1803.

La tiste ci-contre et d'autre part consient les nous des differentes personnes dout je me rapelle en ce moment et parfaitement quiqui il pent y avoir quelque autres personnes dout je ne puis me rappeler exactement de leurs noms.

Translation.

Translation of the above.

Names of the persons who had permission to settle on the vacant lands under the authority of Mr. Francis Lesieur, captain of militia for his Catholic Majesty at the post of Little Prairie, district of New Madrid.

No. 15, James Young O'Carroll had permission to settle on the vacant lands 6th Sept., 1803. The foregoing list contains the names of the several individuals, whose names I now perfectly recollect, though there may be other persons whose names I do not exactly remember. 12th February, 1857.

Correctly translated.

ADOLPHE RENARD.

LOUISIANA TERRITORY,
New Madrid, ss:

I, Francis Lesieur, appointed representative of the commandant of the said district for the Little Prairie, by official letter of Dr. Henry Peyroux, comdt., dated 16th Dec., 1801, do swear that the foregoing list of permissions to settle by me granted in pursuance of said authority is believed to be correct.

Given under my hand, at New Madrid, the 6th June, 1808.

FRANCOIS LESIEUR.

Sworn in open board at New Madrid, 16th June, 1808.

FREDERICK BATES.

RECORDER'S OFFICE, ST. LOUIS,
25th February, 1851.

I certify that the foregoing is correctly transcribed from the original list on file in this office.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Claim.—Statement and notice.

James O'Carroll claims to hold 1000 arpents of land, situated in the district of New Madrid, under the second section of the act of Congress made and provided.

Proprietor, JAMES Y. O'CARROLL. — DISTRICT OF NEW MADRID, *Settlement of Little Prairie.*

Nota.—This land is situated on the river Mississippi, and about two miles from the village of Little Prairie.

[For plat, see original, page 11.]

I do hereby certify that the above plot represents one thousand arpents of land, French measure, situated in the district of New Madrid, Louisiana Territory, and surveyed by me at the request of James Y. O'Carroll, who claims the same as his settlement right by virtue of the second section of the act of Congress respecting such claims, and passed on the 2d day of last March.

Given under my hand the fourteenth day of February, in the year of our Lord one thousand eight hundred and six, at New Madrid.

M. AMOUREUX,
Dep'y Surveyor Dst. New Madrid.

Received for record, St. Louis, the 27th February, 1806.

ANTOINE SOULARD,
Surveyor G'al T. V. Louis'a.

See record book A, p. 424, and original plat.

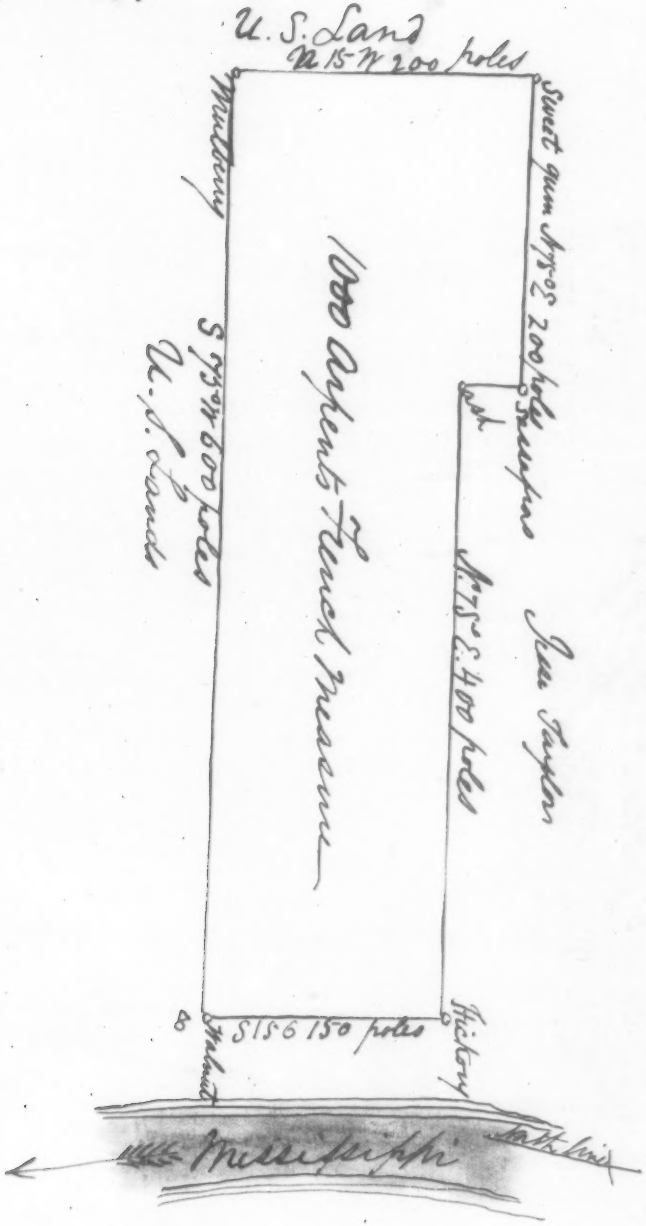
MARCH 13TH, 1806, 3 *o'clock p. m.*

The board met agreeably to adjournment. Present, the honorable Clement B. Penrose and Jas. L. Donaldson, esq.

James Y. O'Carroll, claiming, as aforesaid, 1,000 arpents of land near the Mississippi, district of New Madrid, produces a certificate of a permission to settle from Francis Lesieur, prior to 20th December, 1803, dated 5th December, 1805, and a certificate of survey dated February 27, 1806, (as aforesaid, to wit, under the 2d section of the act of 2d March, 1805.)

George Ruddell, being duly sworn, says that claimant did, prior to and on the 20th day of December, 1803, actually inhabit and cultivate the said tract of land, and had then a wife and 3 children.

No. 170 page 44
67 " 10.



The board grant the said claimant 1,000 arpents of land, situate as aforesaid, provided so much be found vacant there.

On motion, adjourned to to-morrow, ten o'clock a. m.

CLEMENT B. PENROSE,
JAS. L. DONALDSON.

See book of minutes No. 1, ps. 155, 159, and 161.

MONDAY, *July* 10, 1809.

Board met. Present, John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

James Y. O'Carrol, claiming 1,000 arpents of land, situate on the Mississippi, district of New Madrid, produces to the board a certified list of pre-emptions to settle, given by Francis Lesieur, commandant, and sworn to by him before Frederick Bates, commissioner, June 16th, 1808, on which list claimant is No. 14.

The foregoing testimony in the foregoing claim taken as aforesaid at New Madrid, June 17, 1808, by Frederick Bates, commissioner.

Jacob Waggoner, duly sworn, says that premises were inhabited and cultivated by claimant in the year either 1802 or 1803, and constantly to the present time; about 10 or 12 acres now in cultivation; claimant had a wife and 3 children in 1803.

Laid over for decision.

Board adjourned till Wednesday next, nine o'clock a. m.

See book of minutes No. 4, ps. 120, 122, and 131.

FRIDAY, *Dec.* 14*th*, 1810.

Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

James Y. O'Carroll, claiming 1,000 arpents of land. See book No. 1, page 159; book No. 4, page 122. The board grant to James Y. O'Carroll three hundred and fifty arpents of land, and order that the same be surveyed as nearly in a square as may be, and so as to include his improvements.

Board adjourned till Wednesday next, ten o'clock a. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE.

See minutes of old board, book No. 5, ps. 31, 32, and 33.

THURSDAY, *June* 20*th*, 1811.

Board met. Present, Clement B. Penrose and Frederick Bates, commissioners.

Cert. 1040. James Y. O'Carroll. Book 5, p. 32. Survey at expense of United States. Board adjourned till to-morrow, 8 o'clock a. m.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See book No. 5, ps. 187, 188, and 193.

Louisiana. Commissioners' certificate No. 1040. June 20th, 1811.

We, the undersigned, commissioners for ascertaining and adjusting the titles and claims to lands in the Territory of Louisiana, have decided that James Y. O'Carrol, original claimant, is entitled to a patent under the provisions of the 2d section of an act of Congress of the United States, entitled "An act for ascertaining and adjusting the titles and claims to land within the territory of Orleans and the district of Louisiana," passed the second day of March, one thousand eight hundred and five, for three hundred and fifty arpents of land, situate in the district of New Madrid, on the Mississippi, and order that the same be surveyed as nearly in a square as may be, and so as to include his improvements, by virtue of a permission from the proper Spanish officer, and also of actual habitation and cultivation prior to and on the twentieth day of December, one thousand eight hundred and three.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See original certificate on file.

Testimony as to lands in New Madrid damaged by earthquakes.

James Y. O'Carroll, claiming 640 acres of land, No. 1040 of com. certificates, and extended by recorder. William Kincheloe, duly sworn, says that this tract was materially injured by earthquakes. (St. Louis, Nov. 10th, 1815.)

See registry of testimony as to lands damaged in New Madrid, ps. 1, 28, and 29.

Certificates of material injury by earthquake.

Nos.	Names of claimants on record.	Quantity.	Situation and remarks.
150	James Y. O'Carroll,	640 acres,	Mississippi: cert. dated Nov. 30th, 1815, del'd James Tanner.

See registry on file.

A list of relinquishments of lands materially injured by earthquakes in the late county of New Madrid, (present) State of Missouri, under act of Congress of 17th February, 1815.

No. of pat. cert.	Names of claimants on record.	Quantity.	Situation.	Relinquishment, by whom, and gen'l remarks.
150	James Y. O'Carroll,	640 acres,	Mississippi,	James Tanner legal rep.

See registry on file.

A list of patent certificates prepared for issue by the recorder of land titles, under the act of Congress of 17th February, 1815, and the supplementary acts, for the relief of those inhabitants of the county of New Madrid who suffered by earthquakes.

Date.	No. of pat. cert.	No. of loc. ct	Original claimant.	No. of survey.	Acres	To whom delivered.
16th Aug't, 1841.	447	150	James Y. O'Carroll,	2498	640	Gen'l Wm. Milburn.

See registry on file.

Paper marked A.

A.—Opinions of the recorder of land titles for Missouri Ter'y as to claims entered under an act of 13th June, 1812, and proven before 1st Jan'y, 1814, as provided by the act of 3d March, 1813, comprehending also the claims in the late district of Arkansas which, by act of 2d August, 1813, *where* permitted to *by* entered until 1st Jan'y, 1814, and proven until 1st of July, 1814, together with the extensions of quantity provided by 4th section of the act of 3d March, 1813, and by confirmation under the act of 12th April, 1814.

A.

Warrant or order of survey.	Survey.	Notice to the recorder, by whom.	Quantity claimed.	Where situated.	Pos., inhab. and cult'n.	Opinions of the Recorder.
By U. S. com. for 350 arps. Cert. 1040.	Survey	James Y. O'Carroll,	1000 arpents,	Mississippi, New Madrid.	.....	Granted 640 acres. A, p. 329, 5, p. 188.

RECORDER'S OFFICE, *St. Louis, 25th Feb'y*, 1851.

The above is correctly transcribed from pages 1 and 18 in book No. 1, being one of the five small books in this office with the following endorsement on the first and also on the fifth book, believed to be in the handwriting of Frederick Bates, to wit: "These five books are original, in the proper handwriting of the undersigned, being his decisions on land claims since the appointment of the late board. They were arranged and fairly transcribed for report to the Commissioner of the General Land Office, but not yet recorded in the books, because they have no authority till sanctioned by government. St. Louis, Nov. 1st, 1815. Frederick Bates, recorder of land titles."

ADOLPHE RENARD,

U. S. Recorder of Land Titles in the State of Missouri.

RECORDER'S OFFICE,
St. Louis, 4*th March*, 1851.

I certify the foregoing, on pages 1, 3, 4, 5, and 6, is, with the attached paper, marked A, a correct and complete transcript from the books, records, plats, files, documents, and registry in this office, of the claim of James Y. O'Carroll or his legal representatives to six hundred and forty acres of land.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Bill exceptions resumed.

New Madrid certificate No. 150, notice of location, and U. S. survey No. 2498 of said location, as follows:

New Madrid certif. No. 150.

No. 150. OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, November 30*th*, 1815.

I certify that a tract of six hundred and forty acres of land on the Mississippi, in the county of New Madrid, which appears from the books of this office to be owned by James Y. O'Carroll, has been materially injured by earthquakes; and that in conformity to the provisions of the act of Congress of the 17th February, 1815, the said James Y. O'Carroll or his legal representatives is entitled to locate six hundred and forty acres on any of the public lands of the Territory of Missouri the sale of which is authorized by law.

FREDERICK BATES.

OFFICE OF THE SURVEYOR GENERAL,
St. Louis, Dec'r 21*st*, 1850.

I certify that the above is a copy of the original certificate No. 150, now on file in this office, of Frederick Bates, recorder of land titles in the Territory of Missouri, issued under the provisions of the act of Congress, and herein mentioned, of the 17th Feb., 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes."

M. LEWIS CLARK,
Surveyor General.

No. 150.—Christian Wilt, for James Y. O'Carroll or his legal representatives, enters 640 acres of land, in virtue of a certificate, No. 150, dated November 30th, 1815, and issued by Frederick Bates, esquire, recorder of land titles for the Missouri Territory.

Beginning at the northwesterly corner of what is commonly called and known by the name of the prairie or Barrier Denozer tract or surveys of land, which said tract includes a number of

surveys or parcels of land claimed by divers individuals, running from said point of beginning N. 83½ E. with the northerly boundary line of the said Denozer tract, 320 poles; thence and from the beginning, N. 6½ W., at right angles, for the quantity of six hundred and forty acres.

CHRISTIAN WILT.

Nov. 8th, 1816.
WM. RECTOR, Esq., *Surveyor, &c.*

Class No. 35.

OFFICE OF THE SURVEROR GEN'L,
St. Louis, Dec. 21, 1850.

I certify that the above is a correct copy from the original, on file in this office, of the notice of location made in virtue of certificate No. 150, issued on the 30th November, 1815, by Frederick Bates, recorder of land titles in the Territory of Missouri, pursuant to the act of Congress approved on the 17th February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid who suffered by earthquakes."

M. LEWIS CLARK,
Surveyor General.

Christian ——, as the legal representative of James Y. O'Carroll, enters six hundred and forty acres of land by virtue of a certificate, No. 150, dated Nov. 30th, 1815, issued by Frederick Bates, esq., recorder of land titles, to wit, fractional section twenty, in township forty-five north, and range seven east, the same in which St. Louis is situated; that part of fractional section seventeen, in the same township, which lies south of the Cul de Sac fields; the western half of fractional section twenty-one, in the same township; and so much off from the north side of the western half of fractional section twenty-eight, in the same township, as will make the quantity.

St. Louis, 16th June, 1818.

JOS. C. BROWN,
For Christian Wilt.

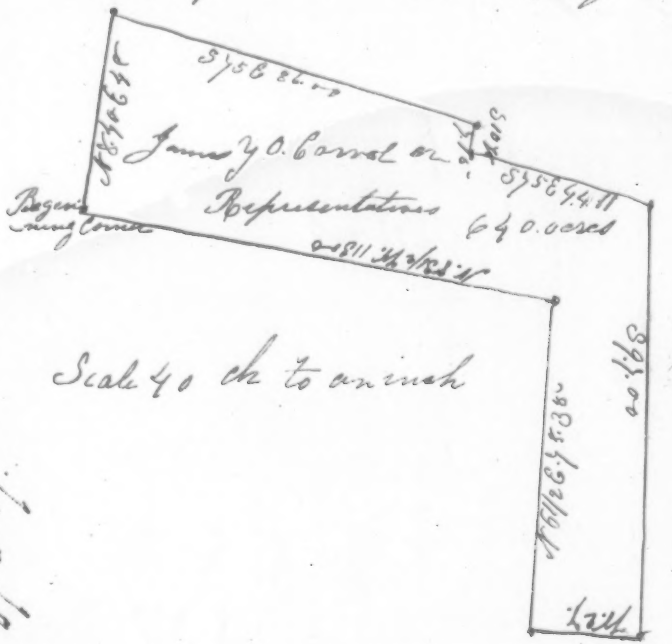
I certify that the former location of C. Wilt on the above certificate interfered with the Cul de Sac fields.
16th June, 1818.

JOS. C. BROWN, *D. S.*

OFFICE OF THE SURVEYOR GEN'L,
St. Louis, Dec. 21, 1850.

I certify that the above is a correct copy from the original, on file in this office, of the notice of location, with the certificate of Jos. C. Brown thereto attached, made in virtue of certificate No.

Township N.° 46 North Range N.° 7 East



Scale 40 ch to an inch

Survey N.° 24.98
Certificate N.° 15.0

Surveyed for
James Y O Carrol
or his Legal representatives
640 acres located by virtue
of a New Madrid
Certificate

No. the Page 49.
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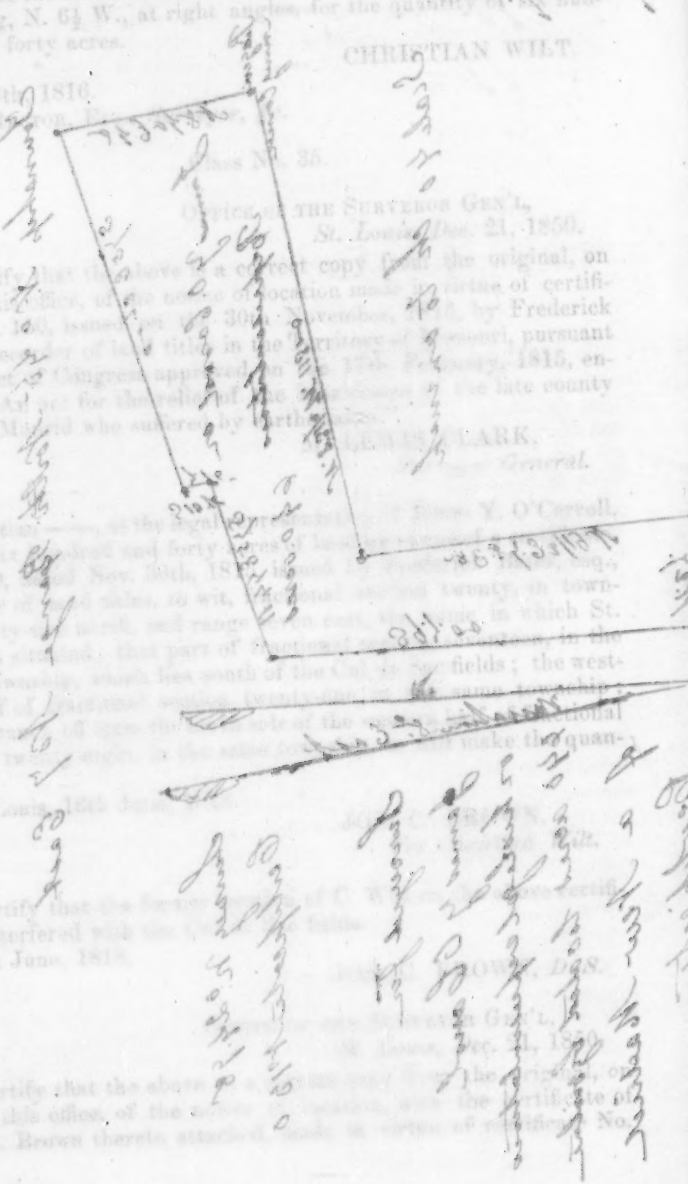

150, issued on the 30th Nov'r, 1815, by Frederick Bates, recorder of land titles in the Territory of Missouri, pursuant to the act of Congress approved on 17th day of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid who suffered by earthquakes."

M. LEWIS CLARK,
Surveyor General.

U. S. survey No. 2498 is as follows:

Survey No. 2498. *Certificate No.* 150.

Township No. 45 north, range No. 7 east.

[For survey, see original, page 19.]

Surveyed for James Y. O'Carroll or his legal representatives 640 acres, located by virtue of a New Madrid certificate.

Beginning at a stone, the S. W. corner of this tract, in Charles Gratiott's line; thence N. 8° 40 E. 48 ch's to S. Dubrieul's corner post in mound; thence S. 75 E. 86 ch's, stone, corner in Chouteau's line; thence S. 15 W. 7 ch's 15 l'ks, Chouteau's corner stone; thence S. 75 E. 44 ch's 61 l'ks, post, mound in Chouteau's line; thence S. 97 ch's, post in mound; thence W. 27 ch's, set post in mound in line of field lands; thence N. 6½ E. 78 ch's 35 l'ks, stone, northeast corner of field lands; thence with north line of field lands N. 83½ W. 113 ch's, to the beginning. April, 1818.

JOS. C. BROWN, *D. S.*

OFFICE OF THE SURVEYOR GEN'L,
St. Louis, Dec. 21, 1850.

I certify that the above plat and description of survey No. 2498, located under New Madrid certificate No. 150, are correctly copied from page 102 of record book A of New Madrid surveys in this office—interferences not being shown thereon.

M. LEWIS CLARK,
Surveyor General for Illinois and Missouri.

Bill of exceptions resumed.

3d. Patent certificate No. 447 on said survey 2498, date August 15, 1841.

Patent certificate, No. 447.

No. 447. OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, Missouri, August 16th, 1841.

I certify, that in pursuance of the act of Congress passed the 17th day of February, 1815, a location certificate, No. 150, issued from this office in favor of James Y. O'Carroll or his legal representa-

tives for six hundred and forty acres of land, that a location has been made, as appears by the plat of survey herewith, and that the said James Y. O'Carrol or is legal representatives is entitled to a patent for the said tract, containing, according to said location, six hundred and forty acres of land, being in T. 45 N., R. 7 E., of the 5th p'l m'n. Survey 2498.

F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Missouri.

To the COMMISSIONER OF THE
GENERAL LAND OFFICE, *City of Washington.*

GEN'L LAND OFFICE,
March 19th, 1847.

SIR: In reference to the claim of Francis Cottard for 40 arpents to an "out-lot," (State Papers, D. Green, vol. 3, page 280,) I herewith enclose for your information a copy of my letter of this date to the recorder at St. Louis.

Should the party claiming under Cottard propose to renew his application for a patent for survey No. 3183, in township 45 N., R. 7 E., it will be necessary, and you are requested, after full notice and opportunity afforded of being heard to all parties interested, to make a thorough examination into the various conflicts with said survey, and report the result, with all the evidence which may be presented, accompanied by your decision as to the validity or invalidity of each interference.

(O'Carroll, N. M. 150.)

One of the claims interfering with Cottard is O'Carroll's New Madrid claim, L. C. No. 150, which is referred to in a letter from this office to the s. gen'l of the 28th August, 1841, and in yours (A) of the 30th July, 1845.

All that portion of O'Carroll's location east of the "Saint Louis common" line will yield 1st to the "common" claims.

Besides this interference with O'Carroll N. M. 150 acres, the following:

(2d.) Survey 2973;
(3d.) Survey No. 3307;
(4th.) Survey No. 3308;
} According to s. gen'ls letter A, of 30th July, 1845, the 2d, 3d, and 4th were proved before the recorder in 1825; the

(5th.) Survey No. 3309; not confirmed. O'Carroll is also interfered with by

(6th.) Survey No. 3182; decision No. 328 of the late board.

If on examination it should satisfactorily appear to you that the lands embraced by said surveys were, at the date of O'Carroll's location, lands reserved for said claims, the O'Carroll location must yield to them, because such land is interdicted under the New Madrid act of 17th Feb'y, 1815; but if at the time of

location either of the tracts was not reserved, but such land as was authorized by the N. Madrid act to be located, the New Madrid claim No. 150 will, of course, hold valid against either tract in this category.

The fact on this point can be best determined by the s. gen'l from the records of his office, aided by those of the recorder.

If there be no valid claim to any portion of the residue of the O'Carroll claim, and such residue was such land as was allowed by the New Madrid act of 17th Feb'y, 1815, to be located, on the return here of a proper plat and patent certificate for said residue a patent will issue.

(Mottard, No. 328 late board.)

If Mottard's survey, under decision No. 325 late board, be correct, he will be entitled to a certificate on account of the valid interference with him by the "St. Louis common claim," and also by the 4th survey above, and by Cottard, No. 3183. Whether he will be entitled to the area elsewhere, in lieu of the small portion of his claim west of the St. Louis common line and south of survey No. 3308, (4th,) will, of course, depend upon the fact as to whether or not it was reserved land for Mottard at the time of the New Madrid location No. 150.

If it was, he will hold that portion; if not, he will be entitled to a certificate elsewhere for the area of said portion also.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

F. R. CONWAY, Esq.,
Surveyor General, St. Louis, Missouri.

GENERAL LAND OFFICE.

I, Justin Butterfield, Commissioner of the General Land Office, do hereby certify that the foregoing on page 2 and 3 is a true copy from the record, vol. 12, pages 521 and 522.

[SEAL.] In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, this 19th day of May, 1851.

J. BUTTERFIELD,
Commissioner.

Bill of exceptions.

No. 4. Deed of O'Carroll to George Ruddle, dated 29th Nov., 1805.

On the 18th day of March, 1809, the following deed of sale was presented to be and was recorded the same day:

O'Carroll to G. Ruddle.—Deed.

This indenture, made this 29th day of November, in the year of

our Lord one thousand eight hundred and five, by and between James Young O'Carroll, of the township of Little Prairie, in the district of New Madrid, and Territory of Louisiana, of the one part, and George Ruddell, of the township, district, and Territory aforesaid, of the other part, witnesseth: that for and in consideration of the sum of four hundred dollars, to him in hand paid, the receipt whereof is hereby acknowledged, and the said George Ruddell, his heirs, executors, &c., forever discharged, exonerated, and acquitted, the said James Young O'Carroll hath granted, bargained, aliened, conveyed, and confirmed, and doth by these presents grant, bargain, sell, alien, release, convey, and confirm, to the said George Ruddell, his heirs and assigns, forever, all that tract, parcel, or parcels of land situate near the Mississippi, about two miles above the village of the Little Prairie, it being the settlement right of the said James Young O'Carroll, under the second section of the law of Congress, within the district of Louisiana, and the territory of Orleans, and every part, parcel, acre, or arpent thereof which may be confirmed to him, the said James Young O'Carroll, by the commissioner of the United States, or by the United States in Congress assembled, are hereby conveyed, bargained, and sold to the said George Ruddell, together with all the appurtenances thereto belonging or in anywise appertaining, and all the right, interest, and estate of him, the said James Young O'Carroll, is hereby bargained, sold, and transferred to the said George Ruddell forever: moreover, the said James Young O'Carrol doth agree, for himself and his heirs, &c., to and with the said George Ruddell, his heirs and assigns, that he will warrant and defend the same land and premises against the lawful claim of any person and every and all persons through, by, or under him.

In witness whereof, the James Young O'Carroll hath hereunto set his hand and affixed his seal, the day and date first above mentioned.

His
JAMES Y'G ⋈ O'CARROL, [L. S.]
mark.

Signed, sealed, and delivered in presence of us,
FRANCOIS LESIEUR,
M. AMOUREUX.

Received on the day of the date of the within conveyance the within-mentioned sum of four hundred dollars, it being the full consideration money as aforesaid.

His
JAMES Y'G ⋈ O'CARROL, [L. S.]
mark.

Test: JOSH. HUMPHREYS,
M. AMOUREAUX.

DISTRICT OF NEW MADRID, *set:*

On the 29th day of November, 1805, personally appeared the within signed James Young O'Carrol before me, Michael Amoureaux, a justice of the court of common pleas of said district, and acknowledged the within instrument to be his act and deed; all the lands and premises therein mentioned to be conveyed to the within mentioned George Ruddle and his heirs and assigns forever.

M. AMOUREAUX, *J. C. P.*

I, Alphonse Delawderie, clerk of the circuit court and ex-officio recorder for the county of New Madrid, in the State of Missouri, do hereby certify the foregoing to be a true and correct copy from the records in my office of the deed of James Y. O'Carroll to George Ruddell, and of all that appertains to the same, now of record in book No. 3, pages 37 and 38, of New Madrid county records.

[SEAL.] In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at office in the town of New Madrid, the 30th day of December, A. D. 1847.

ALP'E DELAWDERIE, *Clerk.*

Bill of exceptions.

The plaintiff then offered in evidence the following document:

Ruddle to Dameron.—Deed, Nov. 1, 1815.

Rec'd 3d Nov., 1815, and recorded the same day.

This indenture, made this first day of November, A. D. eighteen hundred and fifteen, by and between George Ruddell, of the county of Larrence, and Territory of Missouri, of the one part, and George Dameron, of the county of New Madrid, and Territory aforesaid, of the other part, witnesseth: that the said George Ruddell, for and in consideration of the sum of four hundred dollars *dollars* current money of the United States, to him in hand paid by the said George Dameron, at or before the delivery of these presents, the receipt whereof is hereby acknowledged, he this day hath granted, bargained, and sold, and by these presents do hereby grant, bargain, and sell, unto him, the said George Dameron, his heirs, executors, administrators, or assigns, forever, a certain part of a tract or parcel of land of two hundred arpents, situate in the Little Prairie township, lying and being in the county of New Madrid and Territory of Missouri, and about two and a half miles from the village of Little Prairie, and adjoining part of the same tract sold by said Ruddell to a certain William Rorgenson, the lower side down a byo, and known by the name of James Young O'Carroll's head right, which said tract of land has been materially injured by earthquakes; and whereas under the act of Congress of the United States of the 17th Feb'y, 1815, it is provided that all and every

person or persons owning land in the county of New Madrid, in the Territory of Missouri, thus injured by earthquakes, shall be entitled the right and privileges to *to* locate certain quantities of public lands, which they shall hold in lieu of their injured lands, which injured lands shall revert to and become absolutely vested in the United States. All the rights, privileges, and benefits which are given to the said George Ruddell by the said act of Congress, in virtue of the aforesaid tract of land, are hereby sold and transferred by the said George Ruddell to the said George Dameron, his heirs and assigns, forever: to have and to hold the said tract of land aforesaid, together with all and singular the privileges and appurtenances thereunto belonging, unto him, the said George Dameron, his heirs and assigns, forever; and the said George Ruddell hereby covenants and agrees to warrant and forever defend the said bargained and sold premises, together with the privileges and appurtenances aforesaid, unto him, the said George Dameron, against the claim or claims of him, the said George Ruddell, his heirs, executors, and administrators, or against the claim or claims of every person or persons claiming by, through, or under him, the said George Ruddell.

In witness whereof, I have hereunto set my hand and affixed my seal the day and date first above written.

GEORGE RUDDELL, [SEAL.]

Signed, sealed, and delivered in presence of us,
STEPHEN ROSS,
SAM'L BALDWIN,
JOHN S. HACKER.

TERRITORY OF MISSOURI,
County of New Madrid, set:

Be it remembered that on the first day of November, A. D. eighteen hundred and fifteen, personally came and appeared before me, the undersigned, a justice of the peace in and for the county of New Madrid, the above-signed George Ruddell, and acknowledged the above and within deed to be his act and deed, hand and seal, for the uses and purposes therein mentioned and contained.

Given under my hand this day and date above written.

JOHN SHRADER, *J. P.*

I, Alphonse Delawderie, clerk of the circuit court and ex-officio recorder for the county of New Madrid, in the State of Missouri, do hereby certify the foregoing to be a true and correct copy from the records in my office of the deed of George Ruddell to George Dameron, and of all things appertaining to the same, now of record in book No. six, page 98, of New Madrid county records.

[SEAL.] In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at office in the town of New Madrid, the 30th day of December, A. D. 1847.

ALP'E DELAWDERIE, *Clerk.*

Bill of exceptions.—Exception.

The defendants objected to the admissibility of this deed, because it was void for uncertainty, because it conveyed no part of the land confirmed to J. Y. O'Carroll in New Madrid, in lieu of which certificate No. 150 was granted; which objections the court overruled, and admitted said deed to be read in evidence, to all which defendants at the time excepted.

The plaintiff then read in evidence the following depositions:

Wm. Nelson.

The said deponent, William Nelson, being first carefully examined, and cautioned, and sworn, doth depose and say, that he lives in Tippah county, Mississippi, a greater distance from the said city of St. Louis than one hundred miles: furthermore he saith as follows:

I am 65 years of age; I knew old George Dameron; he died in January, 1816; he lived, while in New Madrid, on a tract of two hundred arpents of land, which he had bought from George Ruddell, it being part of the settlement right of James Y. O'Carroll, to wit, situated in Little Prairie township, New Madrid county, State of Missouri.

George Dameron left only eight children when he died. The eldest was Mary, sometimes called Polly; she is my wife, and is now living with me in Tippah county, State of Mississippi.

The second, named John, he lived, until about four years ago, in Hardeman county, Tennessee; he married in Illinois about 1811; he never lived in New Madrid county or in Missouri; I do not believe he ever was there; I have known him ever since he was married, constantly, and know that he could not have gone to Missouri without my knowing it.

I knew a man named John Dameron, who was the son of old John Dameron, the brother of George Dameron, and the cousin of John Dameron, about whom I have been speaking. This John Dameron, son of old John Dameron, went to New Madrid county, and lived with his uncle, George Dameron, on the same place he bought from George Ruddle, being part of the James Y. O'Carroll settlement right; he lived there when his uncle died; I saw him there after his uncle's death.

The third child of George Dameron was George; he died in Illinois about the year 1836.

The fourth child of old George Dameron was Elizabeth or Betsey, who married Taylor Nelson when she was about seventeen years of age. They live in Lowndes county, Mississippi.

The fifth child of old George Dameron was Moses.

The sixth child was Bryant Dameron, who died somewhere about 1839, leaving six children, whose names were Levi, Calvin, Margaret, Annie B. Olive, Lavinia, and Virginia. These six were the only children he had.

The seventh child of old George Dameron was Sylvia, who married George Nelson when she was about sixteen years of age. They lived in Tippa county, Missi., for about sixteen years before George Nelson's death; he died about two years ago.

The eighth child of old George Dameron was Ancabel, who married Thomas Heron. They are both dead.

These eight children were the only children and heirs of old George Dameron; and further deponent saith not.

WM. NELSON.

Mary Nelson.—Depo.

The said deponent, Mary Nelson, being first carefully examined and cautioned and sworn, doth depose and say, that she lives in Tippah county, State of Mississippi, a greater distance from the said city of St. Louis than one hundred miles. Furthermore she saith as follows:

I am in the 64th year of my age. My father's name was George Dameron. He left the State of Kentucky in or about the year 1810, and went to Illinois, where he remained a short time, and then went to New Madrid county, Missouri, where he lived until the time of his death. He died in New Madrid county, Missouri, in the year 1816. He left only eight children when he died. I am the eldest. I was married to William Nelson in the year 1812. We are now living in Tippah county, Mississippi.

The second child was John Dameron. He lived until about four years ago in Hardeman county, Tennessee. He married in the State of Illinois. He never lived in New Madrid county or in Missouri. I have known him ever since I can remember anything, and know that he could not have gone to Missouri without my knowing it. I had a cousin, named John Dameron, who was a son of my uncle, John Dameron; he was called "Ground Hog" John, and my brother, John Dameron, was commonly called "Cuffey." Ground Hog went to New Madrid county, and lived with my father, and was there when he died.

The third child of my father, George Dameron, was George Dameron. He died in Illinois.

The fourth child of old George Dameron was Elizabeth or Betsey, who married Taylor Nelson when she was seventeen years of age. They are living in Lowndes county, Mississippi.

The fifth child was named Moses.

The sixth child was Bryant Dameron, who died somewhere about the year 1839, leaving only six children, whose names are Levi, Calvin, Margaret, Annie B. Olive, Livina, and Virginia.

The seventh child of George Dameron was Sylva, who married George Nelson when she was about sixteen years of age. They lived in Tippah county, Mississippi, until about five years since.

The eighth child of my father, George Dameron, was Ancabel, who married Thomas Herron. They are both dead.

These eight children were the only children and heirs my father, George Dameron, left; and further this deponent saith not.

Her
MARY ⋈ NELSON.
mark.

Mathias Z. Rhoades.

The said deponent, Mathias Z. Rhoades, being first carefully examined, cautioned, and sworn, doth depose and say, that he lives at Jonesboro', in the county of Union, State of Illinois, a greater distance from the said city of St. Louis than one hundred miles: furthermore he saith, that George Dameron, junior, son of old George Dameron, senior, died on or about the year A. D. 1836, and left only seven children, viz: Nancy Matilda Dameron, Mary Dameron, Elizabeth Dameron, Jefferson K. Dameron, Wesley Dameron, George W. Dameron, and David D. Dameron; that these are all the children whom George Dameron left; that I married Nancy Matilda Dameron in the year A. D. 1840; that Mary Dameron married William Escue before the seventh day of November, A. D. 1849; and that Elizabeth Dameron married Beverly Henderson; that they are all of age, except David D. Dameron, who I believe will be of age about this year. Mary was married to William Escue and was his legal wife on and before the 7th day of November, A. D. 1849; that Mary and William Escue, her husband, myself, and Nancy Matilda, my wife, made a deed to Thomas Johns for New Madrid certificate of re-location number 150.

MATHIAS Z. RHOADES.

Bill of excep'ns.

The plaintiff then read the following deeds in evidence:

W. Dameron to T. Johns.—Deed.

This deed, made and entered into this the seventh day of November, one thousand eight hundred and forty-nine, between Wesley Dameron, of the county of Union, and State of Illinois, of the one part, and Thomas Johns, of Missouri, of the other part, witnesseth: that for and in consideration of the sum of five dollars to the said Dameron paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Johns, his heirs and assigns, forever, all the right, title, interest, and claim of the said Dameron, as heir of George Dameron, deceased, in and to a tract of land known and designated as New Madrid certificate number one hundred and fifty, and United States survey 2498: to have and to hold the same unto the said Johns, his heirs, &c., forever, against the claim of myself, my heirs, &c., and against the claim of any and all persons claiming under me. This deed shall be so construed as to warrant a

title to said land to the said Johns only against myself, my heirs, &c., and against persons claiming under me, and no others.

In witness whereof, I have hereunto signed my name and affixed my seal, this the day and date first above written.

His
WESLEY ✕ DAMERON, [SEAL.]
mark.

Witness:

MATHIAS ZIMMERMAN RHOADES,

His
WILLIAM ✕ ESCUE.
mark.

STATE OF ILLINOIS,
County of Union, ss:

This day personally appeared before me, Randolph V. Marshall, clerk of the county commissioners' court in and for said county, Mathias Zimmerman Rhoades and William Escue, who are personally known to me to be the same persons whose names are subscribed to the within conveyance as subscribing witnesses thereto, who, after being duly sworn according to law, say and prove that the person, Wesley Dameron, whose name is subscribed to the within deed as a party thereto, is the same person who executed it; that he signed his name thereto, and acknowledged the same as a party thereto, and that they, the said witnesses, subscribed their names thereto as witnesses thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at my office in Jonesborough, Illinois, on this the 8th day of November, eighteen hundred and forty-nine. [SEAL.]

RANDOLPH V. MARSHALL, *Clerk.*

COUNTY OF ST. LOUIS, *ss:*

I Stephen D. Barlow, recorder for said county, do certify that the foregoing instrument of writing was filed for record in my office November 19th, 1849, and truly recorded in book "E" 5, page 479.

[SEAL.] Witness my hand and official seal the date last aforesaid.

S. D. BARLOW, *Recorder.*

Wm. Escue and wife to T. Johns.—Deed.

This deed, made and entered into this the seventh day of November, eighteen hundred and forty-nine, between William Escue and Mary Escue, his wife, both of the State of Illinois, of the first part, and Thomas Johns, of Missouri, of the second part, witnesseth: that the parties of the first part, for and in consideration of the sum of ten dollars to them in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by

these presents doth grant, bargain and sell, convey and confirm, unto the party of the second part, his heirs and assigns, forever, all their right, title, interest, and claim, as heirs of George Dameron, deceased, in and unto a tract of land known and designated as U. S. Madrid certificate number one hundred and fifty, and U. S. [illegible] two thousand four hundred and ninety-eight. The said parties of the first part do hereby covenant to warrant and defend the title to said land unto said Johns, his heirs, &c., and against the claims of all manner of persons claiming or to claim under them.

In witness whereof, we have hereunto signed our names, and affixed our seals, this the day and date first above.

His
WILLIAM ✕ ESCUE. [SEAL.]
mark.

Her
MARY ✕ ESCUE. [SEAL.]
mark.

Attest: A. J. VIMMS,
R. V. MARSHALL.

STATE OF ILLINOIS,
County of Union, ss:

I, Randolph V. Marshall, clerk of the county commissioners' court in and for said State and county, do hereby certify that William Escue and Mary Escue, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed of conveyance as parties thereto, personally appeared before me, the undersigned, clerk of the said court, and acknowledged severally that they executed the said deed freely and voluntarily. And the said Mary Escue, wife of the said William Escue, is personally known to me to be the same person whose name is subscribed to the within deed as a party thereto; and she, on an examination apart and separate from her said husband, was made acquainted with the within conveyance, acknowledged that she executed it freely, and relinquishes all her right and title to the real estate in said deed described of her own free will, and not from fear, compulsion, or any undue influence of her said husband as a party thereto.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, this eighth day of November, eighteen hundred and forty-nine, at my office in Jonesborough, Illinois. [SEAL.]

RANDOLPH V. MARSHALL, *Clerk*.

COUNTY OF ST. LOUIS, *ss:*

I, Stephen D. Barlow, recorder for said county, do certify that the foregoing conveyance was filed at my office Nov. 19th, 1849, and is truly recorded in book No. 5, page 49 and fol.

Witness my hand and official seal the day last aforesaid. [SEAL.]

S. D. BARLOW, *Recorder*.

M. Z. Rhoades and wife to Thos. Johns.—Deed.

This deed, made and entered into this the eighth day of November, my seal, thu[illegible] hundred and forty-nine, between Mathias Z. Rhoades and [illegible]atilda Rhoades, his wife, of the State of Illinois, of the first part, and Thomas Johns, of Missouri, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of ten dollars to them in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, convey and confirm, unto the said party of the second part, his heirs and assigns, forever, all their right, title, and claim, as heirs of George Dameron, deceased, in and unto a tract of land in the State of Missouri, designated as New Madrid certificate number one hundred and fifty, and United survey number twenty-four hundred and ninety-eight. The said parties of the first part do hereby covenant to warrant and defend the title to the said land unto the said Johns, his heirs, &c., against the claim or claims of themselves, their heirs, &c., forever, and against the claims of all manner of persons claiming or to claim under them.

In witness whereof, we, the parties of the first part, have hereunto signed our names and affixed our seals, this the day and date first above written.

MATHIAS ZIMMERMAN RHOADES, [SEAL.]

Her
NANCY MATILDA ⋈ RHOADES, [SEAL.]
mark.

Attest: A. J. VIMMS,
R. V. MARSHALL.

STATE OF ILLINOIS,
Union County, ss:

I, Randolph V. Marshall, clerk of the county commissioners' court in and for said State and county, do hereby certify that said Mathias Zimmerman Rhoades and Nancy Matilda Rhoades, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing deed of conveyance as parties thereto, personally appeared before me, the undersigned, clerk of the said court, and acknowledged severally that they executed the said deed freely and voluntarily; and the said Nancy Matilda Rhoades, wife of the said Mathias Zimmerman Rhoades, is personally known to me to be the same person whose name is subscribed to the within deed as a party thereto, and she, on an examination separate and apart from her said husband, was made acquainted with the within conveyance, acknowledged that she executed it freely, and relinquishes all her right and title to the real estate in said deed described of her own free will, and not from fear, compulsion, or any other undue influence of her said husband as a party thereto.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Jonesborough, in said [SEAL.] State and county, this 8th day of November, A. D. 1849.

RANDOLPH V. MARSHALL.

COUNTY OF ST. LOUIS, *ss:*

I, Stephen D. Barlow, recorder for said county, do certify that the foregoing deed was filed in my office Nov. 19th, 1849, and truly recorded in book I, No. 5, page 92 and foll.

[SEAL.] Witness my hand and official seal the date last aforesaid.

S. D. BARLOW, *Recorder.*

Geo. W. Dameron to M. H. Moore.—Deed.

This indenture or deed, made and entered into this the sixth (6th) day of February, A. D. 1850, by and between George W. Dameron, of the State of Illinois, of the first part, and Mathew H. Moore, of the State of Missouri, of the second part, witnesseth: that for and in consideration of the sum of six (6) dollars, in hand paid to the said party of the first part by the said party of the second part, the receipt whereof is hereby acknowledged, the said first party has granted, bargained, and sold, and does by these presents grant, bargain, and sell, release, confirm, and convey, unto the said party of the second part, his heirs and assigns, forever, all the right, title, interest, and claim of the said party of the first part in and unto a tract or parcel of land, situated and being in the State of Missouri, and known and designated as New Madrid certificate No. 150 and United States survey No. 2498, and containing six hundred and forty acres: to have and to hold the same unto the said party of the second part, his heirs and assigns, forever, against the claim or claims of myself, the said first party, my heirs, &c., and against the *the* claim or claims of all manner of persons claiming under or by me, the said first party.

In witness whereof, I, the said first party, have hereunto signed my name and affixed my seal, the date first above written.

His
GEORGE W. ⋈ DAMERON, [SEAL.]
mark.

Done in presence of—
MATHIAS ZIMMERMAN RHOADES,
His
JEFFERSON K. ⋈ DAMERON.
mark.

STATE OF ILLINOIS,
County of Union, ss:

Be it remembered, that on the seventh day of February, in the year 1850, personally came before me, clerk of the county court in

and for said county and State, Mathias Zimmerman Rhoades and Jefferson K. Dameron, personally known to be subscribing witnesses to the foregoing deed, and who, after being duly sworn according to law, did depose and say, that George W. Dameron, whose name appears subscribed to said deed, is the real person who executed the same, and that the said Mathias Zimmerman Rhoades and Jefferson K. Dameron subscribed their names as witnesses thereto in the presence of and at the request of the said George W. Dameron, which is sufficient evidence to me of the execution of said deed, and that the same is proved in conformity to the laws of the State of Illinois.

[SEAL.] Witness my hand and seal of office, at Jonesborough, in the county of Union, this day and date above.

RANDOLPH V. MARSHALL,
Clerk Co. Court.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder in and for said county, certify that the foregoing instrument of writing was filed in my office for record November 26th, 1850, and is duly recorded in book Q, No. 5, page 273.

[SEAL.] Witness my hand and official seal the date last aforesaid.

S. D. BARLOW, *Recorder.*

Moore and Johns to Gitt.—Deed.

This indenture witnesseth, that Mathew H. Moore, Julia D. Moore, his wife, and Thomas Johns, parties of the first part, for and in consideration of one thousand dollars to them in hand paid by William W. Gitt, party of the second part, all of Cape Girardeau county, Missouri, there is hereby sold and conveyed and quit-claimed unto William W. Gitt, his heirs and assigns, for and in consideration of the said above sum of one thousand dollars, all the right, title, and claim of the parties of the first part in and unto a certain tract of land in Saint Louis county, Missouri, containing six hundred and forty acres, located in virtue of New Madrid location certificate number one hundred and fifty and survey number twenty-four hundred and ninety eight, (2498,) in the name of James Y. O'Carroll or his legal representatives.

In testimony whereof, we, Mathew H. Moore, Julia D. Moore, and Thomas Johns, parties of the first part, have, for the purposes aforesaid, hereunto set our hands and seals, on this the 21st day of October, in the year of our Lord one thousand eight hundred and fifty.

M. H. MOORE, [SEAL.]
JULIA D. MOORE, [SEAL.]
THOMAS JOHNS, [SEAL.]

In presence of—

STATE OF MISSOURI,
County of Cape Girardeau, ss:

Be it remembered, that on this the twenty-first day of October, in the year of our Lord one thousand eight hundred and fifty, before me, John C. Walker, the undersigned, one of the justices of the Cape Girardeau county court, State of Missouri, personally came and appeared Mathew H. Moore and Julia D. Moore, his wife, and Thomas Johns, who are personally known to me to be the same persons whose names are subscribed to the within deed of conveyance as parties thereto, who severally, for the uses and purposes therein contained, acknowledged the same to be their free act and deed as parties thereto. And the said Julia D. Moore, the wife of Mathew H. Moore, is personally known to me to be the same person whose name is subscribed to the within deed as a party thereto; and she, on an examination apart and separate from her said husband, was made acquainted with the conveyance, acknowledged that she executed it freely, and relinquishes her dower and right thereto and therein in the premises therein and herein described, of her own free will and accord, and not from any compulsion, coercion, or any other undue influence of her said husband.

In testimony whereof, I have hereunto set my hand the day and year above, in Cape Girardeau county, Missouri.

JOHN C. WALKER,
Justice of the County Court.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed in my office for record Oct. 31, 1850, and is truly recorded in book O, No. 5, page 159.
[SEAL.] Witness my hand and official seal the date last aforesaid.

S. D. BARLOW, *Recorder.*

Gitt and wife to Holme.—Deed.

Know all men by these presents, that we, William W. Gitt and Diana Gitt, wife of William W. Gitt, parties of the first part, both of Cape Girardeau county, Missouri, do, for and in consideration of one thousand dollars, to us in hand paid by Peter H. Holme, of Illinois, party of the second part, sell, convey, and quit-claim unto him, the party of the second part, his heirs and assigns, forever, two undivided thirds of all their right, title, and claim to and in a certain tract of land in Missouri, located on and in virtue of New Madrid certificate number one hundred and fifty, and being survey number two thousand four hundred and ninety-eight, (2498.)

The parties of the first part claim, as the legal representatives of George Ruddle, two hundred arpents of land, in virtue of a convey-

ance of *an* a like quantity of land out of a larger tract in the late county of New Madrid, in lieu of which the tract above conveyed is a part.

In testimony whereof, we, William W. Gitt and Diana, parties of the first part, have, on this the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and fifty, hereunto set our hands and seals.

WILLIAM W. GITT, [SEAL.]
DIANA GITT, [SEAL.]

Attest:

STATE OF MISSOURI,
County of Cape Girardeau, ss:

Be it remembered, that on this the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and fifty, before me, a justice of the county court, the undersigned, John C. Walker, a justice of the Cape Girardeau county court, State of Missouri, personally and severally came William W. Gitt and Diana Gitt, his wife, who are personally known to me to be the same persons whose names are subscribed to the within deed of conveyance as parties thereto, who, for the uses and purposes therein contained, acknowledged the same to be their free act and deed. And the said Diana Gitt, on an examination separate and apart from her husband, was made acquainted with the within conveyance, acknowledged that she executed it freely, and not from fear, force, threat, or compulsion, or any other undue influence of her said husband.

In testimony whereof, I have, the day and year above written, set my hand as certifying that she, the said Diana Gitt, also acknowledged that she relinquishes all her right and claim to dower in the premises hereinbefore described of her own free will and accord.

JOHN C. WALKER,
Justice of the County Court.

Received of Peter H. Holme one thousand dollars, being the consideration money on the within deed of conveyance in full. St. Louis, Mo., November 4th, 1850.

WILLIAM W. GITT.

Witness: JNO. W. TWICHELL,
TAYLOR BLOW.

[Here follows map, page 41.]

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder within and for the county aforesaid,

do hereby certify that the foregoing instrument of writing was filed for record in my office November 26, 1850, and is truly recorded in book S, No. 5, page 172.

[SEAL.] Witness my hand and official seal the day last aforesaid.

S. D. BARLOW, *Recorder*.

William H. Cozzens. Evidence for Plaintiff.

William H. Cozzens, on the part of the plaintiff, testified that defendants were in possession of 150 acres of the land mentioned in the petition, to wit, survey No. 2498, in name James Y. O'Carroll, and were so in possession at and prior to the commencement of this suit, and that the same is of the yearly value of five dollars per acre, and lies outside of the out-boundary of the town of St Louis, run under the act 1812.

That said 150 acres was north of the Prairie des Noyers common fields, south of the Cul de Sac common fields, and west of the St. Louis common and the Motard tract; and the said O'Carrol tract and the conflicting claims therewith, is duly and correctly represented in the following plat:

Which plat the plaintiff then gave in evidence. Said O'Carrol tract is shown by the green lines.

Evans' Testimony.

A. H. Evans, for the plaintiff, testified that "head right" meant and was generally understood to mean "settlement right," and that the interest claimed by plaintiff in this suit in the property described in the declaration is worth more than two thousand dollars. That is, the said Evans stated that he had dealt a great deal in lands from an early day in this county, and that among the early inhabitants of the county "settlement right" and "head right" had been used by them as being meaning the same thing.

The defendants then asked the following instruction:

Instruction No. 1 asked by def'ts.

"The jury are instructed that the evidence is not sufficient to entitle the plaintiff to recover in this suit."

Exception.

Which the court refused to give; to which defendants at the time excepted.

The defendants then gave in evidence the following deed:

On the 8th day of June, 1818, rec'd for record, and the same day recorded the following deed:

Ruddle and wife to Gillespie.—Deed.

This indenture, made and concluded upon this 16th day of May, in the year of our Lord one thousand eight hundred and eighteen, by and between George Ruddell and Theodochy, his wife, of the county of Lawrence, and Territory of Missouri, of the one part, and Andrew P. Gillaspie, of the county of New , and Territory aforesaid, of the other part, witnesseth: that for and in consideration of the just and full sum of five hundred dollars, to them in hand paid by the said Andrew P. Gillaspie, the receipt of which payment is hereby acknowledged by the said George and wife, and he, the said George and wife, hath this day granted, bargained, and sold, and do by these presents give, grant, bargain, and set over to him, the said Gillaspie, *them* tracts or parcels of land situate in the county of New Madrid, in the Little Perrarce township, one tract of two hundred arpents, situate on the Mississippi or near the Mississippi, it being a part of James Y. O'Carrol's settlement, also two lots in the little village, granted to John or Jean Montmeine: to have and to hold all right, title, interest, and claim, be the same more or less, of him, the said George and wife, to the said Andrew P. Gillaspie, his heirs and assigns, forever; and the said Gillaspie, being well acquainted with the situation of the above-described tract and lots of ground, takes the same at his own risk and hazard.

Given under our hands and seals this day and date first above written.

GEORGE RUDDELL, [SEAL.]

Her
THAADOSHETH ⋈ RUDDELL, [SEAL.]
mark.

Signed, sealed, and delivered in presence of us,
JAMES TANNER,
ABRAHAM RUDDLE.

TERRITORY OF MISSOURI,
County of New Madrid, sct:

I, Richard Sessums, justice of the peace with and for the county of New Madrid, do hereby certify that James Tanner personally appeared before me this day, and made oath on the holy evangels of Almighty God that he saw George Ruddle and Theodosia Ruddle sign, seal, and deliver, and heard them acknowledge the within deed of conveyance to be their act and deed, hand and seal, for the use and purposes therein expressed, and that Abraham Ruddle signed the same as witness in his presence.

Given under my hand at office May 26, 1818.

RICH'D SESSUMS, *Justice Peace.*

STATE OF MISSOURI,
County of New Madrid, ss:

I, Richard H. Hatcher, clerk of the circuit court and ex-officio

recorder within and for the county of New Madrid aforesaid, do hereby certify that the above and foregoing is a true, full, and complete transcript of the original record of a deed from George Ruddell and wife to Andrew P. Gillaspie, with the certificates of record and proof of acknowledgment of same, as fully as the same appear of record in my office in book A ten, pages 73 and 74, of the records of said county.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at office in the town of New [SEAL.] Madrid, this 7th day of February, A. D. 1854.

RICH'D H. HATCHER, *Clerk.*

The defendant then offered to give in evidence the following document:

Ruddle to Tanner and Gillespie.—Deed.

On the 17th day of October, 1816, received for record, and same day recorded the following deed:

This indenture, made this 7th day of March, in the year of our Lord one thousand eight hundred and sixteen, by and between George Ruddle and Theodocia, his wife, of the county of Larrants, and Territory of Missouri, of the one part, and James Tanner and Andrew P. Gillaspie, of the Territory aforesaid, and county of New Madrid, of the other part, witnesseth: that the said George Ruddle and Theodocia, his wife, for and in consideration of the full and just sum of five hundred and twenty-five dollars, current money of the United States, to them in hand paid by the said Tanner and Gillaspie, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath this day granted, bargained, and sold, and by these presents doth grant, *doth grant*, bargain, sell, *allan*, and release, convey, and confirm, unto them, the said Tanner and Gillaspie, their heirs and assigns, forever, all that tract or parcel of land of five hundred and fifty arpens of land, situate, lying, and being in the county of New Madrid, and township of the Little Prairie, and on the waters of the Mississippi, it being a part *a part* of the said tract of land originally claimed before the United States commissioners of land claims for the Missouri Territory, which tract of land has been materially injured by earthquakes; and whereas under the act of Congress of the United States of the 17th day of February, 1815, it is provided that person or persons owning lands in the county of New Madrid thus injured by earthquakes shall be entitled to locate certain quantities of land of the United States, which they shall hold in lieu of their injured lands, which injured lands shall revert to and become absolutely vested in the United States; all the privileges and benefits given to the said George Ruddle and Theodocia, his wife, by said act of Congress, which said claim has been regularly transferred to the said George

Ruddle, his heirs *heirs* and assigns, and the said George Ruddle, Theodocia, his wife, are hereby sold and transferred to the said Tanner and Gillaspie, their heirs and assigns, forever: to have and to hold the said tract or parcel of land, together with all and singular the privileges and appurtenances thereunto belonging, unto them, the said Tanner and Gillaspie, and their heirs and assigns, forever; and the said George Ruddle, Theodocia, his wife, covenants and agrees to warrant and forever defend the said bargained and sold premises, together with the privileges and appurtenances aforesaid, unto them, the said Tanner and Gillaspie, and their heirs and assigns, free from all claims, demands, or incumbrances of whatever nature.

Witness our hands and seals the day and year above written.

GEORGE RUDDELL, [SEAL.]

Her
THAADOPETH ⋈ RUDDELL, [SEAL.]
mark.

Signed, sealed, and delivered in presence of us,
JOHN CHANDLER,
GEO. WEST.

This day appeared before me, the undersigned, one of the justices of the peace in and for the county of Larran, and Territory of Missouri, the within named and signed George Ruddle and Theodocia, his wife, and acknowledged the within deed to be their act and deed, hand and seal, for the use and purposes therein mentioned.

Given under my hand this 7th day of March, 1816.

GEORGE WEST, *J. P.*

STATE OF MISSOURI,
County of New Madrid, ss:

I, William S. Moseley, clerk of the circuit court and ex-officio recorder within and for the county of New Madrid aforesaid, do hereby certify that the foregoing two pages contain a true and correct copy of the original record of a deed from George Ruddell and wife to James Tanner and Andrew P. Gillaspie, as fully as the same appears of record on pages 116 and 117 of book number eight of the records of said county.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at office in the town of New [SEAL.] Madrid, this the 28th day of May, 1851.

WM. S. MOSELEY, *Clerk.*
By R. H. HATCHER, *his Deputy.*

Obj'n sust'd.—Except'n.

The plaintiff objected to the giving of this deed in evidence, on

the ground that the same was not a conveyance of any portion of the land in New Madrid known as James Y. O'Carroll's settlement right or head right, and did not relate to the land in dispute; which objection the court sustained, and excluded said deed; to all which defendants at the time excepted.

The defendants then gave in evidence the following document:

Gillispie to Tanner.—Deed.

On the 18th day of October, 1816, received for record and the same day recorded the following deed:

Know all men by these presents, that I, Andrew P. Gillaspie, of the county of New Madrid, and Territory of Missouri, have this day granted, bargained, and sold, and by these presents doth give, grant, bargain, and set over *over*, to James Tanner, of the county and Territory aforesaid, all my right, title, interest, and claim of James Y. O'Carrol, also to the claim of John Baker, sign, of two hundred and fifty arpents, and the claim confirmed to the said Baker, under George Morgan, which said claim, or a part of them, was bought in partnership by the said Andrew P. Gillaspie and said James Tanner; and he, the said Gillaspie, for and in consideration of one hundred and ninety dollars to him in hand paid by the said James Tanner, for which he, the said Gillaspie, *do* agree to warrant and forever defend the claim that is in him against himself, his heirs, or executors, or against any person whatsoever.

Given under my hand and seal this 17th day of October, 1816.

ANDREW P. GILLASPIE, [SEAL.]

Teste: RICH'D H. WATERS,
RCHD. SEESSMUS.

TERRITORY OF MISSOURI,
County of New Madrid, ss:

Be it remembered, that on the 18th day of October, in the year eighteen hundred and sixteen, personally came and appeared before me, Rich'd H. Waters, clerk of the circuit in and for the county of New Madrid, the within signed Andrew P. Gillaspie, party grantor to the within instrument of writing, and acknowledged the same to be his free and voluntary act and deed, hand and seal, for the use and purposes therein expressed.

In testimony whereof, there being no judicial seal yet procured to said court, I have hereunto subscribed my name and affixed my own private seal, the day and date above written.

RICH'D H. WATERS, [SEAL.]

STATE OF MISSOURI,
County of New Madrid, ss:

I, William S. Moseley, clerk of the circuit court and ex-officio

recorder within and for the county of New Madrid aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the original record of a deed from Andrew P. Gillaspie to James Tanner, as fully as the same appears of record on pages 122 and 123 of the book number eight of the records of said county.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at office in the town of New [SEAL.] Madrid, this the 28th day of May, A. D. 1851.

WM. S. MOSELEY, *Clerk*.
By RICH'D H. HATCHER,
his Deputy.

Tanner to Wilt.

This deed and covenants, made and entered into by and between James Tanner, of the county of New Madrid, in the Missouri Territory, of the one part, and Christian Wilt, of the town and county of St. Louis, in the same Territory, of the other part, witnesseth: that the said James Tanner, for and in consideration of the sum of twelve hundred and eighty dollars, current money of the United States, to him in hand paid by the said Christian Wilt, the receipt of which payment is hereby acknowledged, has granted, bargained, and sold, and does by these presents grant, bargain, and sell, to the said Christian Wilt, and to his heirs and *assigned*, forever, six hundred and forty acres of land, with the right and privilege of locating the same according to the provisions of an act of Congress of February 17th, 1815, for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes; the land and claim thereto hereby sold and conveyed being six hundred and forty acres, then rightfully and lawfully owned and belonging to James Y. O'Carroll, since that time conveyed by good claim of title to the said James Tanner, who, as legal representative of the said O'Carroll, has accepted the relief offered by the said act of Congress, and procured from the recorder of land titles a certificate, No. 150, authorizing the said James Y. O'Carroll or his legal representatives to locate the said six hundred and forty acres on any of the public lands of said Territory the sale of which is authorized by law; and the said James Tanner, legal representative of the said James Y. O'Carroll, does hereby authorize and empower the said Christian Wilt to locate the said six hundred and forty acres of land accordingly; and the said James Tanner, for the consideration aforesaid, hereby covenants with the said Christian Wilt that he, the said James Tanner, his heirs and representatives, will warrant and forever defend the right and title of the said six hundred and forty acres of land, wheresoever the same be located as aforesaid, according to the lines and boundaries thereof, as the same may be established by *by* final survey to him, the said Christian Wilt, his heirs and assigns, in fee simple, forever, together with all and singular of the premises, appurtenances, benefits, and

advantages thereunto in any wise belonging: to have and to hold the said claim and six hundred and forty acres of land, with the premises aforesaid, to him, the said Christian Wilt, his heirs and assigns, forever, free and clear *off* and from all and all manner of adverse titles or claims to the same or any part thereof, and free and clear *off* and from all and every kind of embarrassment whatsoever. And the said James Tanner, for the aforesaid consideration, hereby further covenants with the said Christian Wilt, that he, the said James Tanner, his heirs or representatives, shall and will, at any time when thereunto requested by the said Christian Wilt, his heirs or assigns, after the said claim shall be located as aforesaid, and final survey thereof made and boundaries established, make to him, the said Christian Wilt, his heirs or assigns, a new general warrantee deed describing the particular land on which the said claim may be located as aforesaid by the lines, courses, distances, and boundaries thereof, as the same may be established by final survey.

In testimony whereof, the said James Tanner has hereunto set his hand and seal, at St. Louis, this thirty-first day of , in the year 1816. The word the, on 2d line of the other page, interlined before signing.

JAMES TANNER, [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN C. SULLIVAN,
GEORGE WILSON.

MISSOURI TERRITORY,
County of St. Louis, sct:

Be it remembered, that on the day and date of the within instrument in writing, before me, Mary Philip Leduc, clerk of the circuit court within and for the county aforesaid, personally came and appeared the within-named James Tanner, and acknowledged the within instrument of writing to be his act and deed, hand and seal, for the purposes therein contained.

[SEAL.] In witness whereof, I have hereunto set my hand and seal, day and date above said.

M. P. LEDUC, *Clk.*

Recorded this 25th March, 1819.

A. GAMBLE, *Clk.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder in and for said county, do hereby certify that the foregoing is a true copy of an instrument of writing, and also of the certificate of acknowledgment, and of the date of

recording thereof, as fully as the same remains of record in my office in book H, pages 237 and following.

[SEAL.] Witness my hand and official seal, at St. Louis, the 9th day of May, 1851.

S. D. BARLOW, *Recorder*.

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that heretofore, to wit, on the 6th of September, 1831, there was filed in the office of the clerk of the circuit court for the county aforesaid the following bill in chancery, to wit:

HERTZOG & WILT
vs.
HEMPSTEAD. } Tran.

To the honorable circuit court in and for the county of Saint Louis, sitting as a court of chancery:

Complaining unto your honorable court, your orator, Joseph Hertzog, at present of the town and county of St Louis, and within the jurisdiction of this court, showeth that, in the month of June, in the year one thousand eight hundred and eleven, your orator, then residing in the city of Philadelphia, agreed with Christian Wilt, his nephew, and who he had raised in his store, then residing at St. Louis, but since deceased, to from a partnership in the trade and business of selling merchandise in the then Louisiana Territory, and also in whatever other business they might choose to pursue in said Territory, the terms of which partnership were these: your said orator was to furnish all the capital, purchase the goods at Philadelphia and elsewhere at the eastward, attend to the transportation of the same, and in general to perform all things which might be necessary and proper as a partner residing at the eastward; the said Christian Wilt, on his part, was to reside at and superintend all the business of the concern at St. Louis and elsewhere in said Territory, for which he was to have and receive one-third of the profits and suffer one-third of the losses. That in pursuance of this understanding and agreement, it was further consented by your orator that the name and style of the firm might be as the said Christian Wilt might deem fit, who thereupon adopted the style of "Christian Wilt," under which name and firm they commenced business at St. Louis and elsewhere in the now State of Missouri, and continued with much success until the fall of 1818, when the said partners agreed to take into their said firm at St. Louis, Andrew Wilt, the brother of said Christian Wilt.

And your orator further showeth, that during the partnership of "Christian Wilt" aforesaid, he, said Wilt, with the goods and partnership funds, purchased a considerable real estate for and on account of said firm, as the books of said firm will show, the title

deeds to which the said Christian Wilt always took in the name of said firm "Christian Wilt." That in this way he purchased, amongst considerable other real estate situate in Missouri and Illinois, the following property, situate, lying, and being in the said county of St. Louis, to wit: one certain lot, piece, or parcel of ground in the town of St. Louis, containing one hundred and twenty feet, French measure, in front, by one hundred and fifty feet, more or less, in depth, bounded on the west and in front by First Main street, north by a cross street, which separates it from lot of Andre L. Andreville, east by the river Mississippi, and south by lot now occupied by Gabriel Paul; it being the same lot purchased by said Wilt in part from Edward Hempstead and wife, by deed dated Aug. 1st, 1811, and recorded in the office of the recorder St. Louis county, in book C, pages 457 and following, and the other part from Pierre Chouteau, sen., and wife, by deed dated September 2d, 1812, and recorded in the same office, book C, page 66 and following; all which may more fully appear by reference to said deeds and records; upon which said lots the said Christian Wilt erected, for the use and benefit of said concern, and out of its funds, a large brick store, dwelling-house, stable, outhouses, and also a factory for the manufacture of white and red lead, and other adjoining and necessary buildings attached to said factory.

Also one other lot, part, and piece of ground, situate in the same town, containing the quantity of sixty feet front, running back one hundred and fifteen feet, bounded in front by First Main street, north by the lot of Michel Rolette, south by the lot of Francois M. Benoist, dec'd, and west by a lot of Joseph and Francois Robedout, on which said lot there is a brick house and candle and soap factory, and which was purchased at sheriff's sale as Joseph Henderson's property, as may more fully appear by reference to the sheriff's deed for the same, recorded in the office aforesaid, in book H, page 471 and following.

And one other lot or parcel of ground, situate in the same town, containing thirty feet front by one hundred and fifty feet deep, bounded in front and eastwardly by First Main street, south by a lot formerly owned by Louis Latowmean, north by lot formerly occupied by Thomas Forsythe, and west by a lot of William C. Carr, being the same lot acquired by said Wilt from Louis Latounean and wife, by deed dated June 16th, 1816, and recorded in same office, book C, page 515 and following.

Also the undivided moiety or half part of a certain tract of land situate, lying, and being in the same county, containing two hundred and four acres, bounded on the north by lands formerly owned by Capt. Wm. Mapoy, south by land of Anthony Soulard, as will more fully and at large appear by reference to the deed of conveyance for the same from Simon Bruster and wife, dated May 12th, 1818, and recorded in the aforesaid office, book G, pages 302 and

following. The other part of said belongs to Col. James Morrison, of Lexington.

Also a certain other tract or parcel of land situate, lying, and being about three and a half miles southwest of the town of St. Louis, in the prairie called the "Barriere des Noyes," containing the quantity of six hundred and forty acres, be the same more or less, it being a certain location made by the said Christian Wilt, by virtue of a certain New Madrid certificate so called, the number whereof is "150," dated Nov. 30th, 1815, in the name of James Y. O'Carroll or his legal representatives, all which will more fully appear by reference to said location, in the office of the surveyor United States land for Missouri, Illinois, and Arkansas, and to the deed of transfer for said certificate from James Tanner, as the legal representative of said James Y. O'Carrol, to said Christian Wilt, dated in the year 1816, and recorded in the same office for St. Louis county, book H, pages 237, 8, and 9.

And your orator further showeth, that the said partnership continued as aforesaid until the fall of 1818, when your orator agreed to advance for the said Andrew Wilt, since deceased, his share of capital stock, to wit, one-third, and *and* the said Christian Wilt and your orator agreed that the said Andrew should be taken in as an equal third partner in the said firm of St Louis, and that the whole effects, credits, and goods, and stock in trade in the new State of Missouri of the said firm of Christian Wilt, should form the stock of the new firm, to be styled C. & A. Wilt & Co., which last firm continued till the unfortunate death of said Andrew Wilt and said Christian Wilt, in the summer of 1819; during the existence of which said last-mentioned partnership they made no profits, and, on the contrary, lost much.

And your orator further showeth, that said Christian Wilt died without there having been any settlement of the accounts of the original firm, which had contracted some debts, most of which remain unsettled.

And your orator further showeth, that said firm of Christian Wilt has been re-established in that name since the death of said Andrew Wilt, inasmuch as said firm of "C. & A. Wilt & Co." had made no profits, and as all the capital stock of the share of said Andrew was advanced by your orator.

And your orator further showeth, that said Christian Wilt died intestate, leaving as his next of kin and only heir and legal representative his infant son, George Wilson Wilt, aged about 4 years; the wife of said Christian having died about four years previously. And your orator further states, that Charles S. Hempstead, (the brother-in-law of said Christian,) then and at present of said town and county of St. Louis, and whom he prays may be made defendant to this bill, administered on the estate of said Christian Wilt, deceased, and was also by the circuit court of St. Louis county

aforesaid duly appointed guardian of said George W. Wilt, who is now residing with his guardian.

But now, so it is, may it please your honorable court, that it has become necessary to secure some debts, and pay others of said firm of Christian Wilt, by mortgaging and selling some of the real estate above described, which cannot be done legally so long as the titles to said real is vested in the heir of the said Christian, from whom they cannot be divested save by the intervention of this honorable court; in and under consideration whereof, and forasmuch as your orator is remediless in the premises, at and by the direct and strict rules of the common law, and cannot have adequate relief only in a court of equity, where matters of this and a like nature are properly cognizable; therefore your orator prays that said Charles S. Hempstead, as administrator and guardian aforesaid, may answer hereto, and that you will on such answer order and decree that he, said Hempstead, as guardian as aforesaid, do convey and transfer, by deed, all of the real estate mentioned in this bill to your orator, as surviving partner of the late firm of "Christian Wilt," for the purposes aforesaid, and he, &c.

JOSEPH HERTZOG,
Surv'g Part. of "C. Wilt & Co."

COUNTY OF ST. LOUIS, *sct:*

Joseph Hertzog, the above-named complainant, being duly sworn, says that [the] facts stated in the foregoing bill of complaint are true.

JOSEPH HERTZOG,
Surv'g Part'r of "C. Wilt & Co."

Sworn to and subscribed before me, a justice of the peace in and for said county, this 3d day of Sept., 1821.

THOS. McGUIRE, *J. P.* [SEAL.]

Answer.

The above-named Charles S. Hempstead, guardian as aforesaid, for answer to so much of the foregoing bill of complaint as is material, says, that he admits the facts stated in the foregoing bill are true to the best of his information and belief, and can urge no reason why the prayer of said complaint should not be granted if this honorable court shall think fit so to do, &c.

CHAS. S. HEMPSTEAD,
Guardian, &c., as aforesaid.

Sworn to and subscribed in open court this 4th day of Sept., 1821.

A. GAMBLE, *Clk.*

And afterwards, to wit, on the 6th day of September, A. D. 1821, this cause coming on this present day to be heard, by consent of all parties, before the honorable the circuit court in and for the said county of St. Louis, sitting as a court of chancery upon bill and answer, in presence of the parties concerned—the substance of the plaintiff's bill appeared to be, that, in the month of June, in the year one thousand eight hundred and eleven, the said plaintiff, then residing in the city of Philadelphia, agreed with Christian Wilt, his nephew, and who he had raised in his store, then residing at St. Louis, but since deceased, to from a partnership in the trade and business of selling merchandise in the then Louisiana Territory, and also in whatever other business they might choose to pursue in said Territory, the terms of which partnership were these: the said plaintiff was to furnish all the capital, purchase the goods at Philadelphia and elsewhere at the eastward, attend to the transportation of the same, and in general to perform all things which might be necessary and proper as a partner residing at the eastward; the said Christian Wilt, on his part, was to reside at and superintend all the business of the concern at St. Louis and elsewhere in said Territory, for which he was to have and receive one-third of the profits and suffer one-third of the losses. That in pursuance of this understanding and agreement, it was further consented by the plaintiff that the name and style of the firm might be as the said Christian Wilt might deem fit, who thereupon adopted the style of Christian Wilt, under which name and firm they commenced business at St. Louis and elsewhere in the now State of Missouri, and continued with much success until the fall of 1818, when the said partners agreed to take into their said firm at St. Louis, Andrew Wilt, the brother of said Christian Wilt.

And the said plaintiff further stated, that during the partnership of Christian Wilt aforesaid, he, said Wilt, with the goods and partnership funds, purchased a considerable real estate for and on account of said firm, as the books of said firm will show, the title deeds to which the said Christian Wilt always took in the name of said firm "Christian Wilt;" that in this way he purchased, amongst considerable other real estate situate in Missouri and Illinois, the following property, situate, being, and lying in the said county of Saint Louis, to wit:

One certain lot, piece, or parcel of ground, in the town of St Louis, containing one hundred and twenty feet, French measure, in front, by one hundred and fifty feet, more or less, in depth, bounded on the west and in front by First Main street, north by a cross street which separates it from a lot of Andre Laudreville's, east by the river Mississippi, and south by the lot now occupied by Gabriel Paul, it being the same lot purchased by said Wilt in part from Edward Hempstead and wife, by deed dated Aug. 1, 1811, and recorded in

the office of the recorder St. Louis county, in book C, page 457 and following, and the other part from Pierre Chouteau, sen., and wife, by deed dated September 2d, 1812, and recorded in the same office, book C, page 66 and following, all which may more fully *and fully* appear by reference to said deeds and records; upon which said lot the said Christian Wilt erected, for the use and benefit of said concern, and out of its funds, a large brick store, dwelling-house, stable, out-houses, and also a factory for the manufacture of white and red lead, and other adjoining and necessary buildings attached to said factory. Also one other lot, part, and piece of ground, situate in the same town, containing the quantity of sixty feet front, running back one hundred and fifteen feet, bounded in front by First Main street, north by the lot of Michel Robbetts, south by lot of Francis M. Benoist, dec'd, and west by a lot of Joseph and Francis Robidoux, on which said lot there is a brick house and candle and soap factory, and which was purchased at sheriff's sale as Joseph Henderson's property, as may fully appear by reference to the sheriff's deed for the same, recorded in the office aforesaid in book H, page 471 and following. Also one other lot or parcel of ground situate in the same town, containing thirty feet front by one hundred and fifty feet deep, bounded in front and eastwardly by First Main street, south by a lot formerly owned by Louis Latoumeau, north by a lot now occupied by Thomas Forsythes, and west by a lot of William C. Carr, being the same lot acquired by said Wilt from Louis Laboumeau and wife, by deed dated June 16th, 1816, deed recorded in same office, book E, page 515 and following. Also the undivided moiety or half part of a certain tract or parcel of land situate, lying, and being in the same county, containing two hundred and four acres, bounded on the north by lands formerly owned by Capt'n Wm. Massey, dec'd, south by lands of Anthony Soulard, as will more fully and at large appear by reference to the deeds of conveyance for the same from Simon Bruster and wife, dated May 12, 1818, and recorded in the aforesaid office, book G, page 302 and following; the other part of said belongs to Col. James Morrison, of Lexington. Also a certain other tract or parcel of land situate, lying, and being about three and a half miles southwest of the town of St. Louis, in the Prairie called Barriere des Noyes, containing the quantity of six hundred and forty acres, be the same more or less, it being a certain location made by the said Christian Wilt, by virtue of a New Madrid certificate so called, the No. whereof is "150," dated November 30th, 1815, in the name of James Y. O'Carroll or his legal representatives, all which will more fully appear by reference to said location, in the office of the surveyor United States lands for Missouri, Illinois, and Arkansas, and to the deed of transfer for said certificate from James Y. O'Carrol to said Christian Wilt, dated in the year 1814, and recorded in the same office in St. Louis county, book H, pages 237, 8, and 9. And the said plaintiff in his said bill also stated, that the said part-

nership continued as aforesaid until the fall of 1818, when your orator agreed to advance for the said Andrew Wilt, since deceased, his share of capital stock, to wit, one-third; and the said Christian Wilt agreed that said Andrew should be taken in as an equal third partner in the said firm at St. Louis, and that the whole effects, credits, and goods, and stock in trade in the now State of Missouri of the said firm of Christian Wilt, should form the stock of the new firm, to [be] styled "C. & A. Wilt & Co.," which last firm continued till the unfortunate death of said Andrew Wilt and said Christian Wilt, in the summer of 1819, during the existence of which said last-mentioned partnership they made no profits, and, on the contrary, lost much. That said Christian Wilt died without there having been any settlement of the accounts of the original firm, which had contracted some debts, most of which remain still unsettled. That said firm of Christian Wilt has been re-established in that name since the death of said Andrew Wilt, inasmuch as said firm of "C. & A. Wilt & Co." had made no profits, and as all the capital stock of the share of the said Andrew was advanced. That said Christian Wilt died intestate, leaving as his next of kin and only heir and legal representative his infant son, George Wilson Wilt, aged 4 years, the wife of said Christian having died about four years previously. And your orator further states that Charles S. Hempstead, (the brother-in-law of said Christian,) then and at present of the said town and county of St. Louis, and whom he prays may be made defendant to this bill, administered on the estate of said Christian Wilt, deceased, and was also, by the circuit court of Saint Louis county aforesaid duly appointed guardian to said George W. Wilt, who is now residing with his said guardian.

Wherefore the said plaintiff prayed the said honorable court, that as it had become necessary to secure some debts and pay others of said firm of Christian Wilt, by mortgaging and selling some of the real estate above-described, which cannot be *done* legally done so long as the titles to said real estate *is* in the heir of said Christian, from whom they cannot be divested save by the intervention of this honorable court; that said Charles S. Hempstead, as administrator and guardian aforesaid, may answer hereto, and that said court would on such answer order and decree that he, said Hempstead, as guardian as aforesaid, do convey and transfer by deed all the estate mentioned in this bill to your said orator, as surviving partner of the late firm of Christian Wilt, for the purposes aforesaid.

Whereunto the said Charles S. Hempstead, guardian as aforesaid, by his answer admits that the facts stated in the above-mentioned bill were true and justly stated according to the best of his information and belief, and that he could urge nothing against said order and decree if the said court should deem meet and proper to make and order it.

Whereupon this court doth think fit, and so order and decree,

and it is accordingly ordered and adjudged, that said Charles S. Hempstead, guardian of the said George Wilson Wilt, infant and sole heir of said Christian Wilt, dec'd, the above-described several pieces and parcels of real estate described in said bill, do convey and transfer the same to said Joseph Hertzog, as surviving partner of the said firm of Christian Wilt, and for the use of said firm; and that Hempstead, as guardian as aforesaid, do execute and deliver the proper and necessary deed or deeds for the same, and that said plaintiff pay all costs and charges of this suit, &c.

STATE OF MISSOURI,
County of St. Louis, ss:

I, Socrates Newman, clerk of the circuit court within and for the county aforesaid, do hereby certify that the foregoing is a true and complete transcript of the record and proceedings in the case of Joseph Hertzog, surviving partner of the late firm of Christian Wilt vs. Charles S. Hempstead, guardian of George W. Wilt, infant heir of Christian Wilt, dec'd, as fully as the same remains of record and on file in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at office in the city of St. Louis, this 17th day of October, A. D. 1856.

[SEAL.]

SOC. NEWMAN, *Clerk.*

Wilt by Hempstead to Hertzog.—Deed.

This indenture, made this tenth day of September, in the year one thousand eight hundred and twenty-one, between Charles S. Hempstead, guardian of George Wilson Wilt, infant son and only heir of the late Christian Wilt, deceased, of the town and county of St. Louis, of the first part, and Joseph Hertzog, surviving partner of the late firm of Christian Wilt, deceased, of the second part, witnesseth: that whereas said Joseph Hertzog, a surviving partner as aforesaid, did file his bill in the St. Louis circuit court, sitting as a court of chancery, to cause to be conveyed to him, said party of the second part, as surviving partner as aforesaid, by the said Charles S. Hempstead, as guardian as aforesaid, certain real estate situate in the county aforesaid, which had been purchased for and on account of said firm by the said Christian Wilt; and whereas the said circuit court, at the present August term thereof, upon the bill aforesaid and the answer of said guardian, did order and decree that the *the* real estate hereinafter particularly described should be transferred and assigned by the said guardian, party of the first part, to the said Joseph Hertzog, as surviving partner of the aforesaid firm, and to and for the sole use and benefit of said firm, all which will and may more fully and at large appear by the said proceedings and decree, now remaining of record in the said circuit court:

Now know ye that I, the said Charles S. Hempstead, as guardian

of said George Wilson Wilt, infant son and heir aforesaid, in pursuance of and by virtue of the power and authority in me vested by said decree, do hereby transfer, release, assign, and set over to said Joseph Hertzog, as surviving partner of said Christian Wilt, deceased, and to his assigns, the following real estate situate, lying, and being in the county aforesaid, and mentioned and described in said decree, to wit; all that certain lot, part, or parcel of ground situate in the town of St. Louis, containing the quantity of one hundred and fifty feet, more or less, in depth, bounded in front and westwardly by First Main street, which separates it from the lot of Emilien Yosty, northwardly by a cross street, which separates it from the lot of Andre Laudreville, south by the lot of Gabriel Paul, and eastwardly by the river Mississippi, on which said lot there is a large brick store and dwelling-house, stone factory, and other buildings, and which is the same lot acquired by said Christian Wilt from Edward Hempstead, Pierre Chouteau, sen., of Mad'me V. Hebert, as may more fully and at large appear by reference to the deed from said Edward Hempstead and wife, dated Aug't 1st, 1811, and recorded in the office of the recorder of St. Louis county aforesaid, book C, pages 457 and following, and to the deed from said Pierre Chouteau, sen., and wife, dated Sept. 22d, 1812, and recorded in the same office, book D, page 66 and following, and to the deed of said Mad'me Hebert, dated June 1, 1812, and recorded in the same office, book C, page 573 and following.

Also all that certain other lot and piece of ground situate, lying, and being in the said town of St. Louis, containing the quantity of sixty feet front by one hundred and fifteen feet, more or less, in depth, bounded eastwardly and in front by said First Main street, northwardly by the lot of Michel Rolette, westwardly by the lot now or formerly of Francis and Joseph Robideaux, and southwardly by the lot of the estate of Francis M. Benoist, dec'd, upon which said lot is a brick dwelling-house and soap and candle factory, it being formerly the property of Joseph Henderson, and as such purchased by said Christian Wilt at sheriff's sale, all which may more fully appear by reference to the said deed therefor, recorded in the office aforesaid, book H, pages 471 and following.

Also all that certain other part or parcel of ground situate, lying, and being in the town of St. Louis aforesaid, containing the quantity of thirty feet front by one hundred and fifty feet deep, bounded eastwardly and in front by said First Main street, southwardly by the lot formerly of Louis Latoumean, northwardly by the lot now of Thomas Forsythe, and westwardly by ground formerly of William C. Cart, and which lot was purchased by Christian Wilt from Louis Latoumean, by deed dated June 19th, 1816, and recorded in the same office, book E, pages 515 and following.

Also the one equal undivided moiety or half of a certain tract or parcel of land, situate and lying in the county aforesaid, containing the quantity of two hundred and four acres, bounded northwardly

by the lands of General D. Bissell and the late William Massey, and southwardly by the lands of Anthony Soulard, it being the same tract of land purchased by said Christian Wilt from Simon Bruster, by deed dated May 12th, 1818, and recorded in the same office, book G, pages 302 and following, as may more fully and at large appear.

Also all that certain tract or parcel of land situate, lying, and being in the same county, about 3½ miles southwest of the town of St. Louis, containing the quantity of six hundred and forty acres; for the boundaries thereof reference is made to the location thereof by Joseph C. Brown, deputy surveyor, for said Christian Wilt, in the office of United States surveyor for Missouri and Illinois, the same having been located by virtue of a certain certificate, commonly a New Madrid claim, the number whereof was "150" and dated November 30th, 1815, granted in favor of James Y. O'Carrol and his legal representatives, which said certificate was sold and conveyed to said Christian Wilt by James Tanner, by deed dated in the year 1816, and recorded in the same office, book H, pages 237, 8, and 9, all which will more fully and at large appear by reference to said location certificate and deed aforesaid:

To have and to hold the above-described premises, with all and singular the rights, privileges, and appurtenances thereunto in anywise belonging, unto him, the said Joseph Hertzog, as surviving partner of the late firm of Christian Wilt, and to his only and proper use, benefit, and behoof, as surviving partner as aforesaid, and his heirs and assigns, forever. And it is further declared, covenanted, and agreed, by and between the said Charles S. Hempstead, as guardian as aforesaid, and the said Joseph Hertzog, and his heirs, executors, administrators, and assigns, that the said several premises hereinbefore conveyed and described are only to be disposed of and sold or bargained among, for, and on account of the said firm of Christian Wilt, either in payment, security of, or discharge of its debts, or in closing its concerns, according to the true intent and meaning of the bills and proceedings in and order and decree of said court as aforesaid, and which is herein again referred to for that purpose.

In testimony whereof, I, the said Charles Hempstead, as guardian as aforesaid, have hereto set my hand and affixed my seal at St. [torn out] the day and year first hereinbefore written.

CHAS. S. HEMPSTEAD, [SEAL.]
Guardian G. W. Wilt.

STATE OF MISSOURI,
County of St. Louis, ss:

This day personally appeared before me, the clerk of the circuit court for the county of St. Louis, the above-named Charles S.

Hempstead, and acknowledged the above and foregoing deed or instrument in writing by him signed as guardian to be his act and deed, hand and seal, for the purposes therein mentioned.

[SEAL.] Given under my hand and seal of office at St. Louis, this 13th day of September, 1821.

ARCHIBALD GAMBLE, *Clerk.*

Recorded this 13th day of September, 1821.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing is a true and correct copy of an instrument of writing, and of the certificate of acknowledgment, and also of the date of recording thereof, as fully as the same remains of record in my office in book K, page 316 and fol.

[SEAL.] Witness my hand and official seal this 1st of Octo., 1855.

———— ————, *Recorder.*

Jos. Hertzog by Sh'ff to H. Clay.—Deed.

To all to whom these presents shall come, I, John K. Walker, sheriff of the county of St. Louis, in the State of Missouri, send greeting:

Whereas a writ of execution issued from the clerk's office of the circuit court within and for the county of St. Louis, returnable to the February term of said court, in the year one thousand eight hundred and twenty-five, in favor of Henry Clay, executor of James Morrison, deceased, against Joseph Hertzog, which said execution became returnable to the March term of said court, in the year aforesaid, pursuant to an act of the last General Assembly, entitled An act to establish judicial districts and circuits, and prescribing the times and places of holding courts, approved Feb'y 5th, 1825, and which execution is in the words and figures following, to wit:

STATE OF MISSOURI,
County of St. Louis, ss:

To the sheriff of St. Louis county, greeting:

Whereas Henry Clay, executor of James Morrison, deceased, at our circuit court, before our judge thereof, hath recovered against Joseph Hertzog the sum of two thousand two hundred and eighty-six dollars for his debt, and also the further sum of one hundred and forty-seven dollars and forty-five cents for his damages by him sustained by reason of the detention of said debt, and also his costs and charges by him about his suit in that behalf expended, which to the said H. Clay, executor of James Morrison, deceased, were

adjudged, as appears to us of record: these are, therefore, to command you, that of the goods and chattels, lands and tenements of the said Joseph Hertzog in your bailiwick, you cause to be made the aforesaid debts, damages, and costs, and that you have the same before the judge of our said on the first Monday of February next, to render to the said Henry Clay, executor as aforesaid, the debt, damages, and costs aforesaid; and for want of sufficient goods and chattels, lands and tenements whereon to levy and make the same, we command you to take the said Joseph Hertzog, if he be found in your bailiwick, and him safely keep, so that you have his body before the said judge on the said first Monday of February, to satisfy the said Henry Clay, as executor as aforesaid, of the aforesaid debt, damages, and costs, and that you certify to our said judge how you execute this writ, and have you then there this writ.

[SEAL.] Witness Archibald Gamble, clerk of our said court, at St. Louis, this 13th day of December, in the year of our Lord 1824.

ARCHIBALD GAMBLE, *Clerk*.

Which said execution, being directed to the sheriff of the county of St. Louis afs'd, and to me, said sheriff, delivered, by virtue of which said execution I did, on the first day of February, in the year one thousand eight hundred and twenty-five, levy upon and seize all the right, title, interest, estate, and property of the said Joseph Hertzog in and to the following described real estate: First, a lot of ground in the city of St. Louis, containing thirty feet front by one hundred and fifty feet deep, bounded east by Main street, south by lot of Louis Letournois, north and west by a lot of William C. Carr. Second, a lot of ground, with the buildings, &c., thereon, in the city of St. Louis aforesaid, containing sixty feet front by one hundred and fifteen feet deep, (more or less,) bounded on the east by Main street, which separates it from a lot of Wm. C. Carr, on the south by a lot of Benoist, west by a lot of Robidoux, and north by a lot of Michel Ladrerotte, on which said lot is the soap factory erected by Joseph Henderson. Third, the undivided half of a tract of land, containing two hundred and four acres, situated in the township of St. Ferdinand, originally granted to Lawrence Huff, bounded on the north by lands formerly owned by William Massie, on the south by land of A. Soulard, acquired by Christian Wilt of Simon Bruster, by deed dated May 12th, 1818. Fouthly, a tract or parcel of land, lying about three and a half miles southwest of the city of St. Louis, in the prairie called Barrie de Noyer, containing six hundred and forty acres, (more or less,) located by virtue of a New Madrid certificate, No. 150, dated 30th November, 1815, granted to James Y. O'Carroll or his legal representatives. And the said property being advertised as the law directs, by fixing advertisements in six of the most public places in my county, at

least twenty days before the day of sale, which said advertisements were in the words and figures following, to wit:

Sheriff's sale.

By virtue of a writ of execution to me directed from the circuit court, in favor of Henry Clay, ex'or of James Morrison, against Joseph Hertzog, I have levied upon and will sell for cash, to the highest bidder, at the court-house door in St. Louis, on Thursday, the 10th day of February next, between the hours of 9 and 4, all the right, title, claim, interest, estate, and property of said defendant in and to the following-described real estate, to wit: 1st. A lot of ground in St. Louis, containing thirty feet front by 150 feet deep, bounded east by Main street, south by a lot of Lewis Letourneis, north and west by a lot of William C. Carr. 2d. A lot of ground, with the buildings, &c., thereon, containing 60 feet front by 115 feet deep, (more or less,) bounded east by Main street, south by a lot of "Benoist," west by a lot of Robedoux, andnorth by a lot of Michael Laderath. 3d. The undivided half of a tract of land, containing 204 acres, situated in the township of St. Ferdinand, being the same tract of land originally granted to Lawrence Huff. 4th. A tract of land containing 640 acres, situated in the Barriere Denoyer prairie, located by virtue of New Madrid certificate, No. 150, and bearing date Nov. 30th, 1815. St. Louis, January 1st, 1825.

JOHN K. WALKER, *Sheriff.*

And whereas the act of assembly above referred to provides that all property advertised for sale at the February term of said court shall be sold on the same day of the March term that it would have been sold on at the February term if no such act had been passed, by virtue of which said execution and *and* advertisements and act of assembly above referred to, I did, on the 31st day of March, in the year 1825, it being the same day of the March term of said court that the above-described property was advertised for sale at the said February term, expose to sale, agreeably to the advertisement thereof and the act of assembly above referred to, at the court-house door in the city of St. Louis, during the sitting of the circuit court for said county, for ready cash, all the right, title, interest, estate, and property of him, the said Joseph Hertzog, of, in, and to the above-described property, together with all and singular the buildings and improvements thereon; and Henry Clay, executor of James Morrison, deceased, being the highest and last bidder for the second above-described town lot, at the price and sum of five hundred dollars, and for the tract of land thirdly above described, at the price and sum of two hundred and fifty dollars, and for the tract of land fourthly and lastly described, at the price and sum of of four hundred and fifty dollars, making in all the sum of one thousand two hundred dollars, the same was struck off and sold to him, the said Henry Clay, executor of James Morrison as aforesaid:

Now, therefore, know ye that I, John K. Walker, sheriff as aforesaid, for and in consideration of the sum of one thousand two hundred dollars, to me in hand paid by the said Henry Clay, executor as aforesaid, the receipt whereof I do hereby acknowledge, and by virtue of the authority in me vested by law, I do hereby transfer and assign to him, the said Henry Clay, executor as aforesaid, all the right, title, interest, estate, and property of him, the said Jos. Hertzog, of, in, and to the above secondly described town lot and tracts of land, that I might sell agreeably to law, as sheriff aforesaid, by virtue of the aforesaid execution and advertisements and act of assembly above referred to: to have and to hold to him, the said Henry Clay, executor as aforesaid, and to his heirs and assigns, forever.

In witness whereof, I, John K. Walker, sheriff of the county of St. Louis, have hereunto set my hand and seal, this seventeenth day of May, in the year of our Lord one thousand eight hundred and twenty-five, and of the independence of the United States the forty-ninth.

JOHN K. WALKER, *Sheriff*. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on the seventeenth day of May, in the year 1825, John K. Walker, sheriff of the county of St. Louis, personally appeared in open court, and acknowledged the execution of the within deed from him, as sheriff, to Henry Clay, (executor of James Morrison, deceased,) therein named, which said acknowledgment is entered on the records of the court of that day.

Given under my hand and seal of office, at St. Louis, this seventeenth day of May, in the year one thousand eight hundred and twenty five.
[SEAL.]

ARCHIBALD GAMBLE, *Clerk*.

Recorded 7th June, 1825.

ARCHIBALD GAMBLE, *Recorder*.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder in and for said county, do hereby certify that the foregoing is a true copy of an instrument of writing, and also of the certificate of acknowledgment, and of the date of recording thereof, as fully as the same remains of record in my office in book M, pages 303 and foll.

Witness my hand and official seal, at St. Louis, the 12th day of May, 1851.
[SEAL.]

S. D. BARLOW, *Recorder*.

The copy of the judgment filed with the foregoing deed is as follows:

Clay, ex'or of Morrison, to Hertzog.—Judg't.

In the St. Louis circuit court, Saturday, June 12th, 1824.

HENRY CLAY, ex'tor of James Morrison,
vs.
JOSEPH HERTZOG.

Now at this day come the plaintiff, by his attorney, and the said defendant in his own proper person comes and defends the wrong and injury, when, &c., and says he cannot deny the action aforesaid of him, the said plaintiff, nor but that he doth owe the said plaintiff the sum of two thousand two hundred and eighty-six dollars; therefore it is considered that the said Henry Clay, executor of James Morrison, deceased, recover against the said Joseph Hertzog the said debt of two thousand two hundred and eighty-six dollars, and also the further sum of one hundred and forty-seven dollars and forty-five cents for his damages by him sustained by reason of the detention of said debt, and also his costs and charges by him about his suit in this behalf expended, and that he have thereof execution; and the said plaintiff, by his attorney, agrees to a stay of execution until the October term next.

Execution.

STATE OF MISSOURI,
County of St. Louis, ss:

To the sheriff of St. Louis county, greeting:

Whereas Henry Clay, executor of James Morrison, dec'd, at our circuit court, before our judge thereof, hath recovered against Joseph Hertzog the sum of two thousand two hundred and eighty-six dollars for his debt, and also the further sum of one hundred and forty-seven dollars and forty-five cents for his damages by him sustained by reason of the detention of said debt, and also his costs and charges by him about his suit in that behalf expended, which to the said H. Clay, executor of James Morrison, deceased, were adjudged, as appears to us of record: these are, therefore, to command you, that of the goods and chattels, lands and tenements of the said Joseph Hertzog in your bailiwick, you cause to be made the aforesaid debt, damages, and costs, and that you have the same before the judge of our said court, on the first Monday of February next, to render to said Henry Clay, executor as aforesaid, the debt, damages, and costs aforesaid; and for want of sufficient goods and chattels, lands and tenements whereon to levy and make the same, we command you to take the said Joseph Hertzog, if he be found

in your bailiwick, and him safely keep, so that you have his body before the said judge, on the first Monday of February, to satisfy the said Henry Clay, ex'tor as aforesaid, to the aforesaid debt, damages, and costs, and that you certify to our said judge how you execute this writ, and have you then there this writ.

Witness Archibald Gamble, clerk of our said court, at St. Louis, this 30th day of December, in the year of our Lord one thousand eight hundred and twenty-four.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, Socrates Newman, clerk of the circuit court within and for the county aforesaid, certify the foregoing to be true copies of the judgment and execution in the case of Henry Clay, ex'or of Jas. Morrison, vs. Joseph Hertzog, as fully as the same remain in my office.

In testimony whereof, I hereto set my name, and affix the seal [SEAL.] of said court, at office in the city of St. Louis, this 15th day of October, 1856.

SOC. NEWMAN, *Clerk.*

This deed, made this 11th day of October, in the year of our Lord one thousand eight hundred and thirty-nine, witnesseth: that Henry Clay and Lucretia, his wife, of Lexington, in the State of Kentucky, for and in consideration of the sum of five hundred dollars, heretofore paid to the said Henry Clay by William McRee, of the city of St. Louis, in the State of Missouri, now deceased, the receipt of which sum is hereby acknowleded, have bargained, sold, and conveyed, and by these presents do bargain, sell, and convey, to Ann McRee, James F. McRee, and Samuel McRee, heirs and representatives of the said William McRee, deceased, all that certain tract or parcel of land situate in the county of St. Louis, and State of Missouri, lying about three and a half miles southwest of the city of St. Louis, containing six hundred and forty acres, (more or less,) located by virtue of a New Madrid certificate, number one hundred and fifty, issued to James Y. O'Carrol or his legal representatives, being the same tract of land acquired by the said Henry Clay at sheriff's sale as the property of Joseph Hertzog, as will appear by reference to the sheriff's deed to the said Henry Clay, dated the seventeenth day of May, in the year eighteen hundred and twenty-five: to have and to hold the said tract of land above-described, unto the said Ann McRee, James F. McRee, and Samuel McRee, as heirs-at-law of said William McRee, dec'd, in the shares and proportions in which they are entitled by law to the estate of said deceased in the State of Missouri, and to their heirs forever. And the said Henry Clay warrants the title to the said tract of

land against all persons claiming the same under him, but against no other claim or person whatsoever.

In witness whereof, the said Henry Clay and wife have hereto set their hands and seals the date above written.

H. CLAY, [SEAL.]
LUCRETIA CLAY, [SEAL.]

COMMONWEALTH OF KENTUCKY,
County of Fayette.

Be it rememdered that on this day personally appeared before the undersigned, clerk of the county court of Fayette county, Henry Clay and Lucretia, his wife, who are both personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned; and she, the said Lucretia Clay, being by me made acquainted with the contents of said instrument of writing, acknowledged, on examination apart from her said husband, that she executed the same, and relinquishes her dower in the real estate therein mentioned freely and without compulsion or undue influence of the said husband.

In testimony whereof, I have hereto set my hand and seal of said county court, at Lexington, this eleventh day of October, in the year eighteen hundred and thirty-nine. [SEAL.]

J. C. RHODES, *Clk. F. C. C.*

Filed for record June 2d, 1840, and recorded June 24th, 1840.
JNO. RULAND, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder in and for said county, do hereby certify that the foregoing is a true copy of an instrument of writing, and also of the certificate of acknowledgment, and of the date of recording thereof, as fully as the same remains of record in my office in book M, No. 2, pages 260, fol.

Witness my hand and official seal, at St. Louis, the 12th day of May, 1851. [SEAL.]

S. D. BARLOW, *Recorder.*

The plaintiff admitted, for the purposes of this suit, that all the title and interest ever vested in Wm., James F., Ann, and Samuel McRee, is now vested in the defendant, Mrs. Mary McRee.

The defendant then gave the following documents in evidence:

Claim of G. Ruddell.

Proceedings before old board, and confirmation to George Ruddell for 600 arpens, and translation.

Claim.—Statement and notice.

George Ruddell claims to hold 600 arpens of land, situate in the district of New Madrid, under the second section of the act of

Concession.

SENOR INTEN'TE GEN'L: Geo. Ruddell, Americano de nacion, y habitante de la Pequena Pradéria, en el d'o del Nuevo Madrid, con el mayor respeto, a V. S. expone que escargado de una gd. familia, y havia nueve negros, y descando establecerse en dicho d'o para ayuda de sostenes, le a V. S. rendidamente suplica se digne, conceder le 600 a de tierra, en el lugar llamado el Bayou de la Coupe du Chalant, a ½ legua de la enunciada pradiera, y 15 de la villa del Nuevo Madrid, lindando porsu frente principal de 15 a al rio Mississippi de un lado, y por su profundidad de 40 a's al enunciado bayou, y de otros lados a las tierras del dom'o cuya gracia espera mereces de su grande benevolencia y conoceda justicia. En el Nuevo Madrid, a 23 de Febrere, 1801.

GEO. RUDDELL.

Concurriendo en el sup'te las circumstancias que previene la instruccion, lo hallo digno de la gracia que solicita, V. S. hara lo que halle por conveniente. Nuevo Madrid, a 23 de Fevrero, de 1801. (Signed) HENRY PEYROUX.

Translation of the foregoing concession.

TO THE INTENDENT GENERAL: George Ruddell, of the American nation, and an inhabitant of the Little Prairie, in the district of New Madrid, with the best respect, states to your Lordship that he is the father of a large family, and the owner of nine slaves, and that wishing to settle in the said district to maintain his said family, he prays your Lordship to be willing to grant to him 600 arpents of land, at the place called "Bayou de la Coupe du Chalant," at about ½ league distant from said prairie, and 15 leagues from the town of New Madrid, bounded on its principal front of 15 arpents by the river Mississippi on one side, and on its depth of 40 arpents by the aforesaid bayou, and on the other side by the lands of the domain, which favor he hopes to obtain from the great benevolence and known justice of your Lordship.

GEORGE RUDDELL.

In New Madrid, 25th February, 1801.

The petitioner being in the circumstances and having the means required by the regulations, I deem him worthy of the favor he solicits. (S.) HENRY PEYROUX.

New Madrid, 23d February, 1801.

ST. LOUIS, 12*th February*, 1857.

Correctly translated. ADOLPHE RENARD.

his legal representatives is entitled to locate three hundred and twenty acres on any of the public lands of the Territory of Missouri the sale of which is authorized by law—the said quantity of three hundred and twenty acres making, together with the certificates No. 80 and 81, heretofore issued to said Ruddell, the amount of relief provided for him by the said act.

FREDERICK BATES.

OFFICE OF THE SURVEYOR GENERAL,
St. Louis, October 10th, 1856.

The foregoing copies of certificates Nos. 80, 81, and 358 are correctly made from the files of this office.

JNO. LOUGHBOROUGH,
Surveyor General.

Plat of Little Prairie village, offered in evidence by the defendant, is as follows:

Part of T. 18 N., R. 13 E. of the 5th P'l M'n.

[For plat, see original, page 84.]

OFFICE OF THE SURVEYOR GENERAL,
St. Louis, Oct. 15, 1856.

The above plat of the village of "Little Prairie," and its connections with the adjoining lands, is correctly copied from the original township plat in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

A. Gamble, witness for defts.

Archibald Gamble, on the part of defendants, then testified that defendants and those under whom they claim had been in the possession of the premises sued for for something more than twenty-five years; had built two dwelling-houses thereon, and during that period of time had cultivated the said premises.

The above was all the evidence given in the cause.

The plaintiff then asked the following instructions, which the court gave:

Instructions for plaintiff.—Given.

No. 1. If the jury find from the evidence in the cause that James Y. O'Carroll, prior to the 29th Nov'ber, 1805, claimed 1,000 arpents of land in New Madrid county, Mo., as a settlement right, and on that day sold and conveyed, by the deed put in evidence by the plaintiff, to George Ruddle and his heirs whatever might be confirmed thereof, and that on the 1st Nov'ber, 1815, said Ruddle sold and

conveyed to George Dameron and his heirs 200 arpents of the land conveyed by O'Carroll to him, with the right of re-location arising thereon, and that in 1816 six hundred and forty acres of said O'Carrol's claim was confirmed, and that said George Dameron died in 1816, leaving only 8 heirs, one of whom was George Dameron, jun., who died in 1836, leaving only 7 heirs, and they further find that the interests of four of said last-named heirs in dispute had been in part vested in the plaintiff before the commencement of this suit, the plaintiff is entitled to recover the shares of said four heirs, so far as vested in him, in any land in dispute of which the deft. was in the adverse possession at the commencement of this suit, and which was not covered by the claims of Guion, Roy, and Tabeau—provided the jury find all the foregoing facts, and also find that New Madrid certificate No. 150 issued in lieu of the 640 acres confirmed to said O'Carroll, and that the land in dispute was located by said certificate 150.

No. 2. That the deed of George Ruddle to George Dameron is operative to convey to said Dameron two hundred arpents of the head right of James Y. O'Carroll.

No. 3. That the deed of George Ruddle to George Dameron, put in evidence by the plaintiff, is operative to convey to said Dameron 200 arpents of the claim of James Y. O'Carroll, as a head right, and of any land confirmed in lieu of said claim, and conferred the right on said Dameron to re-locate 200 arpents, on account of injury by earthquakes to *to* the land so confirmed; and the jury will find that said Dameron and his legal representatives, by virtue of said deed, became entitled to 200 arpents of the land confirmed to said O'Carroll, on account of his settlement right, provided they believe that by the terms "head right" and "settlement right" the same tract of land was intended to be described and was described.

That until the 16th day of August, 1841, the title to the land in dispute was in the United States, and that there is no statute of limitation or other bar of time in the way of the plaintiff, if they find him otherwise entitled to recover.

The court refused to give the following instructions asked by the defendants:

Deft.'s ins.—Refused.

No. 1. The jury will ascertain from the calls in the deed from George Ruddell to George Dameron, and from the other evidence in the cause, what land was intended to be conveyed thereby; and unless they find that the land intended to be conveyed by said deed would be embraced by a survey of the 640 acres confirmed to James Y. O'Carroll, when the said confirmed tract should be surveyed as nearly in a square as may be, and so as to include his improvements, the plaintiff cannot recover in this action.

No. 2. If the jury find from the evidence that the deed from George Ruddle to George Dameron was intended to apply to a

And the defendants pray the court to sign and seal this bill of exceptions, which is done accordingly.

R. W. WELLS, [SEAL.]

We agree to the above bill of exceptions.

GLOVER & RICHARDSON,
For Pl'ff.

C. GIBSON, *For Defendants.*

MISSOURI DISTRICT, *sct:*

I, Benjamin F. Hickman, clerk of the United States circuit [court] for the Missouri district, do certify the foregoing ninety pages to be a true, correct, and complete transcript of the record, pleadings, and proceedings in a case in said court decided, wherein Peter Holme was plaintiff and William Fenn defendant, as fully as the same remains on file and of record in my office.

In testimony whereof, I hereunto subscribe my name, and affix the seal of said court. Done at office in St. Louis, this [SEAL.] ninth day of March, A. D. 1857.

BEN. F. HICKMAN, *Clk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for Missouri dis- [SEAL.] trict, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Peter Holme, plaintiff, and William Fenn, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held: that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, this thirteenth day of January, in the year of our Lord one thousand eight hundred and fifty-seven.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri District.

Allowed by

R. W. WELLS,
Dist. Judge U. S. for Western Dist. Mo.

In obedience to the within writ of error, I herewith send up a copy of the record as therein directed and commanded.
Given under my hand this 9th day of March, 1857.

BEN. F. HICKMAN,
Clerk C. C. U. S. Mo. Dis.

I have notice of this writ in proper time and manner.

S. T. GLOVER,
For Pl'ff below.